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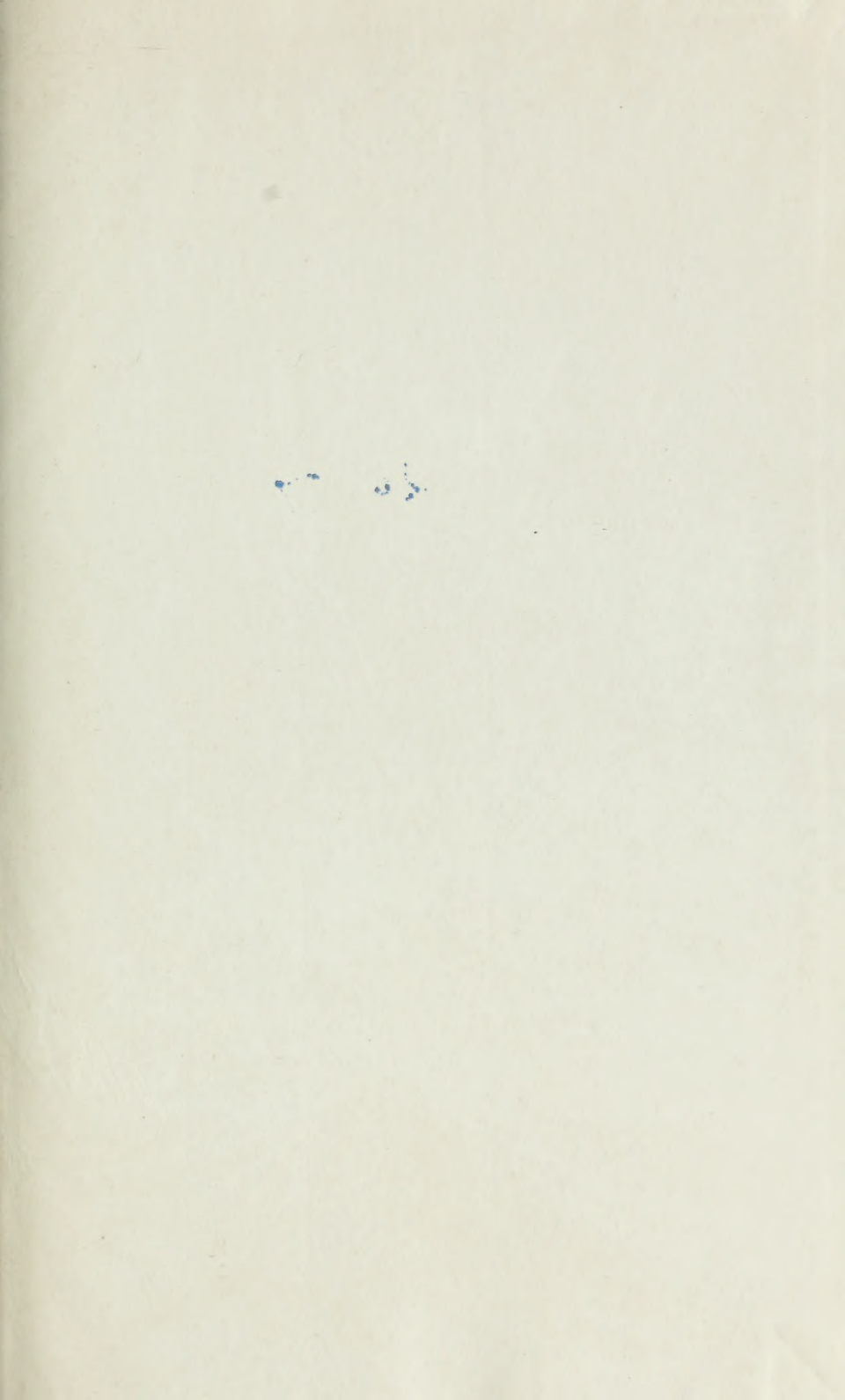
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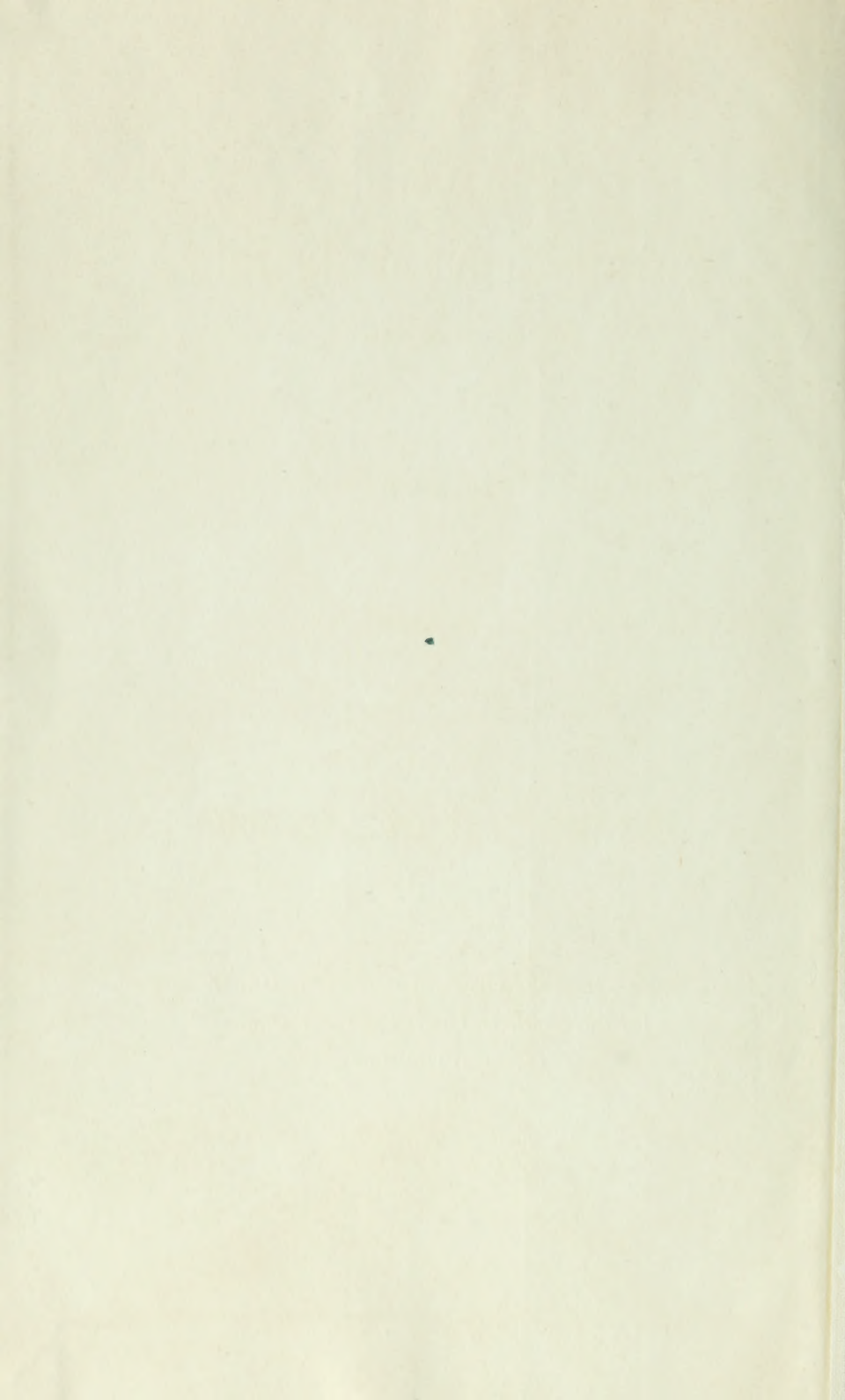
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No. 10445

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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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BENJAMIN ROSE and LOUIS VITAGLIANO,  
Appellants,  
vs.  
UNITED STATES OF AMERICA,  
Appellee.

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Transcript of Record


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Upon Appeal from the District Court of the United States  
for the Southern District of California,  
Central Division

FILED

JUN 21 1944

PAUL P. O'BRIEN,  
CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS:

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and

BENJAMIN J. GOODMAN

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Los Angeles 14, Calif.

For Appellee:

CHARLES H. CARR,

United States Attorney

ERNEST A. TOLIN,

Assistant United States Attorney

600 U. S. Post Office & Court House Bldg.  
Los Angeles 12, Calif. [1\*]

---

\*Page numbering appearing at foot of page of original certified Transcript of Record.

At a stated term, to-wit: The February Term, A. D. 1943, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 8th day of February in the year of our Lord one thousand nine hundred and forty-three.

Present: The Honorable Leon R. Yankwich, District Judge.

[Title of Cause.]

No. 15,811—Crim.

This cause coming on for arraignment and plea of the defendants herein: R. F. Duni, Esq., Assistant U. S. Attorney, appearing for the Government; James Marquardt, Court Reporter, being present and reporting the proceedings; defendants Mac R. Brown, Phil Taplin, Louis Vitagliano, and Sam Weinstein, being present in Court with their attorney, Benjamin Weinstein; defendant Joseph Lieb being present in Court with his attorney, Robert F. Shippee; defendant Benjamin Rose being present in Court with his attorney, Benjamin Goodman; defendant Phil Rezniche being present in Court without counsel, waives an attorney; said defendants herein all state their true names to be as charged in the Indictment, and waive the reading of the Indictment.

It is ordered that this cause be, and is hereby is, continued to February 22, 1943, for plea of said



defendants, demurrer to be filed by February 15, 1943.

31/972 [10]

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In the United States District Court, Southern District of California, Central Division

No. 15811

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MAC R. BROWN, JOSEPH LIEB, BENJAMIN ROSE, PHIL REZNICHE, PHIL TAPLIN, LOUIS VITAGLIANO and SAM WEINSTEIN,

Defendants.

### DEMURRER TO INDICTMENTS

The defendant, Benjamin Rose, for himself alone, and for no other defendants, demurs to the Indictment herein, upon the following grounds:

#### I.

That the Indictment charges conspiracy to "unlawfully, willfully, corruptly and feloniously engage in a conspiracy to commit offenses against the United States, that is to say, to sell, trade, lease, ship and transfer new tires, casings and tubes to consumers and other persons in violation of the statutes" \* \* \* but fails to make any allegation as

to whether or not the defendant, Benjamin Rose was a retailer, distributor, wholesaler or manufacturer, within the meaning and purview of Supplementary Order No. M-15c, [11] subdivision 4 thereof, which permits the selling, leasing, trading, lending, delivering, shipping and transferring of new tires, casings and tubes by any retailer to another retailer or to any distributor, wholesaler or manufacturer.

## II.

That the overt acts alleged in Article 14, subdivisions (b), (c), (d), (e), (g), (h), (i) and (j) of Count One of the Indictment, fail to state facts sufficient to constitute a crime against the United States by the defendant, Benjamin Rose, and said overt acts do not negative the exceptions of provisos in the regulations set forth of the Office of Price Administration.

## III.

That the setting up of more than one offense in a single Count does not enable the court or jury to deal intelligently with the charge, and seriously handicaps the defendant in making his defense, and may prevent him from pleading former acquittal or conviction by reason of the fact that he does not know whether he is being charged with the crime of selling tires to consumers or delivering tires in violation of the law, or whether or not the persons with whom it is alleged Benjamin Rose had transactions relative to tires and tubes were retailers, distributors, wholesalers or manufacturers.

IV.

That there is no such offense as a Conspiracy to Commit Offenses against the United States; that if there is more than one offense, each offense should be set forth in a separate Count.

V.

That the said Indictment and each Count thereof does not [12] state facts sufficient to constitute a crime against the United States.

VI.

That the two conspiracies alleged in Count One and Count Two of the Indictment are co-existent, and involve the same transaction and are simultaneous in beginning and co-terminus in ending.

VII.

That Count One of the Indictment fails to allege the specific statutes, the violations of which are the object of the conspiracy.

VIII.

That Count One of the Indictment fails to allege the specific regulations which are the objects of the conspiracy, and fails to allege the statute or statutes fixing a penalty for the violation of the regulations.

IX.

That Count Two of the Indictment fails to allege the specific statutes, the violation of which are the object of the conspiracy.

## X.

That Count Two of the Indictment fails to allege the specific regulations which are the objects of the conspiracy, and fails to allege the statute or statutes fixing a penalty for the violation of the regulations.

## XI.

That Count Two does not state facts sufficient to constitute a crime against the United States, as it does not plead how or [13] in what manner the United States was, could or would have been defrauded, nor does it plead the means that is, the trickery, device or chicane, bribery or deception) by which a department of the government would have had its functions subverted, or an agent deceived or corrupted.

## XII.

That there is no statute existing fixing a penalty for the consummation of the objects of the conspiracy alleged in Count One and Count Two of the Indictment.

Wherefore, the defendant, Benjamin Rose prays and demands that the Demurrer to the Indictment be sustained, and that judgment be entered dismissing the Indictment and discharging him from custody.



Dated: February 12, 1943.

Yours, etc.,

BENJAMIN J. GOODMAN

Attorney for Defendant, Benjamin Rose,

Office & P. O. Address,

810 William Fox Building,

808 S. Hill Street,

Los Angeles, California

To: Leo V. Silverstein, Esq.,

United States Attorney [14]

Received copy of the within this 15th day of February, 1943.

LEO V. SILVERSTEIN

U. S. Atty.

Attorney for Plaintiff

[Endorsed]: Filed Feb. 15, 1943. [15]

---

[Title of District Court and Cause.]

DEMURRER TO INDICTMENT

Come now the defendants, Mac R. Brown, Phil Taplin, Louis Vitagliano and Sam Weinstein, for themselves alone and for no other defendants, demur to the Indictment herein, upon the following grounds:

I.

That Count One of the Indictment fails to state facts sufficient to constitute a crime against the United States by these defendants.

## II.

That Count Two of the Indictment fails to state facts sufficient to constitute a crime against the United States by these defendants.

## III.

That Count One of the Indictment is insufficient in that the [16] statutes, executive orders, regulations and/or directives contains numerous exceptions which are so incorporated with the language defining the offense, that the ingredients of the offense cannot be accurately described because the exceptions are omitted.

## IV.

That Count Two of the Indictment is insufficient in that the statutes, executive orders, regulations and/or directive contains numerous exceptions which are so incorporated with the language defining the offense, that the ingredients of the offense cannot be accurately described because the exceptions are omitted.

## V.

That Count One fails to allege whether these defendants or any of them were retailers, distributors, wholesalers or manufacturers as defined by Supplementary Order number M-15-C.

## VI.

That Count Two fails to allege whether these defendants or any of them were retailers, distributors, wholesalers or manufacturers as defined by Supplementary Order number M-15-C.

Wherefore, these defendants pray for judgment dismissing the indictment, discharging them and each of them from custody, and exonerating their bonds.

Dated: February 15, 1943.

BENJ. T. WEINSTEIN

Attorney for Defendants Mac  
R. Brown, Phil Taplin, Louis  
Vitagliano and Sam Wein-  
stein [17]

Received copy of the within this 17th day of February, 1943.

LEO V. SILVERSTEIN

U. S. Atty.

Attorney for Plaintiff HKM

[Endorsed]: Filed Feb. 17, 1943. [18]

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At a stated term, to-wit: The February Term, A. D. 1943, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Monday the 29th day of March in the year of our Lord one thousand nine hundred and forty-three.

Present: The Honorable Leon R. Yankwich, District Judge.

[Title of Cause.]

No. 15,811—Crim.

This cause coming on for plea of all defendants except defendant Phil Rezniche, who heretofore plead not guilty; Howard V. Calverley, Esq., Assistant U. S. Attorney, appearing for the Government; Benj. T. Weinstein, Esq., appearing for defendants Mac R. Brown, Phil Taplin, Louis Vitagliano, and Sam Weinstein; Robert F. Shippee, Esq., appearing for defendant; Joseph Lieb; Benj. Goodman, Esq., appearing for defendant Benjamin Rose; one motion of Attorney Weinstein, Paul Angelillo, Esq., who is present, is substituted as attorney for defendant Louis Vitagliano. The defendants waive the reading of the Indictment and each defendant enters plea of not guilty to the charges contained in the Indictment, and it is ordered that this cause be, and it hereby is, continued to May 4, 1943, for trial. Samuel Goldstein, Court Reporter, is present and reports the proceedings.

32/761 [26]



At a stated term, to-wit: The February Term, A. D. 1943, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Friday the 7th day of May in the year of our Lord one thousand nine hundred and forty-three.

Present: The Honorable Ben Harrison, District Judge.

[Title of Cause.]

No. 15,811—Crim.

This cause coming on for further Jury trial of the defendants Mac R. Brown, Benjamin Rose, Phil Taplin, Louis Vitagliano, and Sam Weinstein; Maurice R. Norcop, Esq., Assistant U. S. Attorney, appearing for the Government; Benj. J. Goodman, Esq., appearing as counsel for the defendant Rose; Robert J. Sullivan, Esq., appearing as counsel for defendants Brown, Taplin and Weinstein; Paul Angelillo, Esq., appearing as counsel for defendant Vitagliano; A. H. Bargion, and H. A. Dewing, Court Reporters, being present and reporting the proceedings; the five defendants on trial. Jury and alternate juror are present; and so stipulated by counsel; it is ordered that trial proceed.

\* \* \* \* \*

The Government rests.

At 11:55 A.M. the Court reminds the jurors of the admonition heretofore given, and excuses the

jurors until 2 P.M. today, and the jurors retire from the Courtroom. In the absence of the Jury and alternate juror, counsel present proposed instructions to the Court.

The Court makes a statement and orders that the Government elect between the two counts of the indictment, which it will proceed on, and states that the Court is now of the opinion that this case should proceed and be given to the Jury as to all of the five defendants now on trial.

Attorney Norcop states that the Government elects to stand on count one of the indictment and that the trial proceed on that count only. [27]

The Court orders that the trial will proceed as to count one as to the remaining five defendants, and that it is hereby ordered that count two of the indictment as to the remaining five defendants is dismissed.

\* \* \* \* \*

33/389-391 [28]

At a stated term, to-wit: The February Term, A. D. 1943, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 10th day of May in the year of our Lord one thousand nine hundred and forty-three.

Present: The Honorable Ben Harrison, District Judge.

[Title of Cause.]

No. 15,811—BH Crim.

This cause coming on for further jury trial of the defendants Mac R. Brown, Benjamin Rose, Phil Taplin, Louis Vitagliano, and Sam Weinstein; Maurice Norcop, Esq., Asst. United States Attorney, appearing as counsel for the Government; Benj. J. Goodman, Esq., appearing as counsel for the defendant Rose; Robert J. Sullivan, Esq., appearing as counsel for defendants Brown, Taplin, and Weinstein; Paul Angelillo, Esq., appearing as counsel for the defendant Vitagliano; A. H. Bargon, Court Reporter, being present and reporting the proceedings; the said named defendants being present in Court on bond; the Jury and alternate juror are present, and counsel so stipulate; the Court makes a statement to the Jury as to its order requiring the Government to elect and that the Government has elected to stand on count 1; it is ordered that counsel for the Government proceed with his agument to the Jury.

\* \* \* \* \*

At 5:03 P.M. the Jury returns into Court; all present as before; the five defendants are present with their respective counsel; the Jury is present, and counsel so stipulate. The Court inquires of the Jury if it has agreed upon a verdict, and the Jury through their foreman states that it has, and pursuant to the Court's order the verdict is presented and read by the Clerk, and upon motion of defendants' counsel the Jury is polled, each juror being

asked if the verdict as presented and read by the Clerk is his verdict, and each juror answers "yes"; and thereupon, the Court orders the verdict filed and entered herein, being as follows:

\* \* \* \* \*

33/450-452 [29]

---

[Title of District Court and Cause.]

### MOTION IN ARREST OF JUDGMENT

Comes Now the defendant, Benjamin Rose and moves in arrest of judgment as follows:

#### I.

The indictment fails to state a public offense.

#### II.

Count One of the Indictment is too vague, indefinite and uncertain as to the nature and cause of the accusation and fails to allege the necessary particulars as to the alleged conspiracy.

#### III.

Evidence illegally seized was used in evidence, in violation of the Fourth and Fifth Amendments to the United States [31] Constitution.

#### IV.

There are errors on the face of the record in respect to failure to establish any offense.



V.

The evidence does not support a conviction of a conspiracy to commit offenses against the United States Government.

Dated: May 24, 1943.

BENJAMIN ROSE

Defendant.

BENJAMIN J. GOODMAN,

Attorney for Defendant.

Points and Authorities

I.

A Retailer May Without Certificate Transfer Any New Tire or Tube to Any Retailer, Distributor, Wholesaler or Manufacturer.

O.P.A. Sec. 801 (e).

II.

Other Transfers. (1) By a Retailer or Distributor Without Changing Ownership or Control. Any Retailer or Distributor May Deliver, Ship, or Transfer New Tires or Tubes to Any Warehouse or Premise Owner, Operated, or Controlled by Such Person, Provided There Is No Change in [32] Ownership or Control Involved in This Delivery, Shipment, or Transfer. Records of Such Delivery, Shipment, or Transfer Shall Be Kept and Reports in Connection Therewith Shall Be Made as May Be Required by the Office of Price Administration.

O.P.A. Sec. 801 (f).

## III.

As to Whether or Not There Has Been Sufficient Proof of the Defendant's Connection With the Crime of Conspiracy or a Substantive Crime to Be Put Upon His Defense, Is a Matter of Law to Be First Determined by the Court.

Hedderly vs. United States,

193 Fed. 561.

## IV.

Even Though One Who Commits an Overt Act With Knowledge of the Conspiracy Is Guilty Although Absent When the Crime Which Is the Object of the Conspiracy Is Committed, Nevertheless He Must Know the Purpose of the Conspiracy in Order to Be Guilty Thereof and Must Have Joined in the Agreement to Be Guilty of a Violation of Law.

Bannon, et al. vs. United States;

156 U. S. 464, 468;

Joplin Mercantile Co. vs. United States,

236 U. S. 531, 535;

Terry vs. United States;

7 Fed. (2d) 28, 29;

Craig vs. United States, (C.C.A.),

81 Fed. (2d) 816, 822. [33]

## V.

Although Overt Acts May Be Accomplished by One Charged With Crime, the Statute on Conspiracy Is Not Violated Unless the Overt Act Was Done in Pursuance of the Common Illegal Understanding.

United States vs. Hirsch,  
100 U. S. 33, 34;  
Weniger vs. United States,  
47 Fed (2d) 692, 693.

[Endorsed]: Filed May 24, 1943. [34]

---

At a stated term, to-wit: The February Term, A. D. 1943, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 24th day of May in the year of our Lord one thousand nine hundred and forty-three.

Present: The Honorable: Ben Harrison, District Judge.

[Title of Cause.]

No. 15,811-BH—Crim.

This cause coming on for hearing on pre-sentence reports of the Probation Officer and sentence of each of above-named defendants on count one of the Indictment; Maurice R. Norcop, Esq., Assistant U. S. Attorney, appearing for the Government; Benj. J. Goodman, Esq., appearing as counsel for the defendant Benjamin Rose; Robert J. Sullivan, Esq., appearing as counsel for defendants Mac R. Brown, Phil Taplin, and Sam Weinstein; Paul Angelillo, Esq., appearing as counsel for defendant Louis Vitagliano; C. W. McClain, Court Reporter,

being present and reporting the proceedings; the defendants Mac R. Brown, Phil Taplin, Louis Vitagliano, and Sam Weinstein, being present; defendant Benjamin Rose being absent.

Attorney Goodman makes a statement re absence of defendant Rose; Attorney Norcop makes a statement; the Court suggests that Government counsel get in touch with the Coast Guard and see if the defendant will be produced, and orders a recess until 10:30 A. M.

Court reconvenes at 10:34 A. M.; all present as before; the defendant Rose is still absent.

Attorney Norcop states that he expects the defendant Rose to be present at 11 A. M.; and Court recesses.

At 10:55 A. M. Court reconvenes herein; all present as before; the defendant Rose is still absent; the other defendants being present; the Court makes a statement and orders time of sentence of defendants continued to 3 P. M. today, and Court adjourns until that time. [35]

Court reconvenes at 3:14 P. M.; all present as before; the five defendants are now present, and C. H. Meador, probation officer, is present.

The Court makes a statement and orders the written motion in arrest of judgment by defendant Rose denied, and an exception is allowed and noted. Attorney Goodman makes a statement; the Court makes statement that defendants or their counsel may make statements, if they so desire, and states



that the Court has read the reports of the Probation Officer.

\* \* \* \* \*

The Court makes a statement and sentences the five defendants, as follows:

\* \* \* \* \*

Attorney Goodman moves that the Court indicate the amount of bail for the defendant Rose on appeal. The Court states that it will not fix bail on appeal, as there is no substantial question involved. Attorney Goodman argues in support of his motion to fix bail for defendant Rose, and moves that the Court stay execution and judgment pending application to the U. S. Circuit Court of Appeals for the Ninth Circuit. The Court states that the order denying the motion will stand and the motion to stay execution is denied.

Attorney Angelillo moves that the Court stay execution of judgment as to the defendant Vitagliano. The Court makes a statement and orders the said motion on behalf of defendant Vitagliano denied.

Attorney Goodman states that he now gives oral notice of appeal.

Attorney Angelillo states that he also gives oral notice of appeal. [36]

District Court of the United States, Southern District of California, Central Division

No. 15811-BH. Criminal Indictment in Two counts for violation of U.S.C., Title 18, Sec. 88.

UNITED STATES

v.

BENJAMIN ROSE

### JUDGMENT AND COMMITMENT

On this 24th day of May, 1943, came the United States Attorney, and the defendant Benjamin Rose appearing in proper person, and by his counsel, Benj. J. Goodman, Esq. and,

The defendant having been convicted on verdict of guilty of the offense charged in the Indictment in the above-entitled cause, to wit: count one; did unlawfully, wilfully, knowingly, corruptly, fraudulently and feloniously engage in a conspiracy to commit offenses against the United States, that is to say, to sell, trade, lease, ship and transfer new rubber tires, casings, and tubes to consumers and other persons in violation of the statutes, executive orders, regulations and directives referred to in the Indictment; and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby com-

mitted to the custody of the Attorney General or his authorized representative for imprisonment for the period of One (1) year and one (1) day in a penitentiary type institution, and pay a fine unto the United States of America in the sum of two thousand (\$2,000.) dollars.

It Is Further Ordered that defendant is remanded to the custody of the U. S. Marshal.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

(Signed) BEN HARRISON

United States District Judge.

A True Copy. Certified this 24th day of May, A.D., 1943.

(Signed) EDMUND L. SMITH

Clerk.

By 'MURRAY E. WIRE,

Deputy Clerk.

[Endorsed]: Filed May 24, 1943. [37]

District Court of the United States, Southern District of California, Central Division

No. 15811-BH Criminal Indictment in two counts  
for violation of U.S.C., Title 18, Secs. 88;

UNITED STATES

v.

LOUIS VITAGLIANO

### JUDGMENT AND COMMITMENT

On this 24th day of May, 1943, came the United States Attorney, and the defendant Louis Vitagliano appearing in proper person, and by his counsel, Paul Angelillo, Esq. and,

The defendant having been convicted on verdict of guilty of the offense charged in the Louis Vitagliano in the above-entitled cause, to wit: Count one; did unlawfully, wilfully, knowingly, corruptly, fraudulently and feloniously engage in a conspiracy to commit offenses against the United States, that is to say, to sell, trade, lease, ship and transfer new rubber tires, casings, and tubes to consumers and other persons in violation of the statutes, executive orders, regulations and directives referred to in the Indictment; and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, hav-



ing been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of six (6) months in a jail type institution, and pay a fine unto the United States of America in the sum of one thousand (\$1,000.) dollars.

It Is Further Ordered that defendant is remanded to the custody of the U. S. Marshal.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

(Signed) BEN HARRISON,  
United States District Judge.

A True Copy. Certified this 24th day of May,  
A. D., 1943.

(Signed) EDMUND L. SMITH,  
Clerk.

(By) MURRAY E. WIRE,  
Deputy Clerk.

[Endorsed]: Filed May 24, 1943. [38]

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[Title of District Court and Cause.]

PRAECIPE

To the Clerk of Said Court:

Sir:

Please issue for defendants Benjamin Rose & Louis Vitagliano Indictment, arraignment, plea,

demurrer, demand for bill of particulars, ruling on demurrer, ruling on bill of particulars, motion for arrest of judgment, verdict, judgment, stipulation dated May 25, 1943, permitting filing one bill of exceptions and one appeal for two defendants notice of appeal.

BENJAMIN J. GOODMAN,  
Attorney for appellant Benjamin Rose.

PAUL ANGELILLO,  
Atty. for Vitagliano.

[Endorsed]: Filed May 25, 1943. [48]

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[Title of District Court and Cause.]

#### CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 48 inclusive contain full, true and correct copies of Indictment; Minute Order entered February 8, 1943; Demurrer to Indictment (Defendant Rose); Demurrer to Indictment (Defendant Vitagliano (et al)); Demand for Bill of Particulars by defendant Benjamin Rose; Demand for Bill of Particulars by defendants Mae R. Brown, Phil Taplin, Louis Vitagliano and Sam Weinstein; Minute Order entered March 15, 1943; Minute Order entered March 29, 1943; Portion of Minute Order entered May 7, 1943; Portion of

Minute Order entered May 10, 1943; Verdicts; Motion in Arrest of Judgment; Portion of Minute Order entered May 24, 1943; Judgment and Commitment (Defendant Rose); Judgment and Commitment (Defendant Vitagliano); Notice of Appeal (Defendant Rose); Notice of Appeal (Defendant Vitagliano); Stipulation and Order re one Bill of Exceptions and Praecipe which, with the exception of Assignment of Errors and Bill of Exceptions which have not as yet been filed or settled, constitute the record on appeal to the Circuit Court of Appeals for the Ninth Circuit.

I do further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to \$17.30 which sum has been paid to me by appellants.

Witness my hand and the seal of said District Court this 27th day of May, A. D. 1943.

[Seal]                      EDMUND L. SMITH,  
Clerk.

By THEODORE HOCKE,  
Deputy Clerk. [49]

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At a stated term, to-wit: The February Term, A. D. 1943, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Tuesday the 4th day of May in the

year of our Lord one thousand nine hundred and forty-three.

Present: The Honorable: Ben Harrison District Judge.

[Title of Cause.]

No. 15,811-BH Crim.

This cause coming on for jury trial; Maurice R. Norcop, Esq., Assistant U. S. Attorney, appearing for the Government; Robert S. Shippee, Esq., appearing as counsel for defendant Joseph Lieb; Benj. J. Goodman, Esq., appearing as counsel for defendant Benjamin Rose; Robert J. Sullivan, Esq., appearing as counsel for defendants Mac R. Brown, Phil Taplin, and Sam Weinstein; Paul Angelillo, Esq., appearing as counsel for defendant Vitagliano; the said defendants being present in Court on bond, and defendant Phil Rezniche being present in propria persona, having heretofore waived counsel; H. A. Dewing and A. H. Bargion, Court Reporters, being present and reporting the proceedings.

The case is called, and both sides answering ready, it is ordered that trial proceed.

On motion of Attorney Norcop, it is ordered that the indictment as to the defendant Phil Rezniche be, and it hereby is, dismissed, and his bond exonerated, and further ordered that trial proceed as to the other six defendants, and that a jury be impaneled; whereupon, the Clerk draws the names of the following jurors, who take their seats in the jury box.

1. Harrison R. Ward



2. B. A. Jacobs
3. Thomas M. Reid
4. Wm. Murphy
5. Guy W. Rice
6. Ray M. McMahan
7. A. C. Getty
8. H. H. Fogwell
9. Paul O. Davis
10. Herbert H. Culling
11. Kenneth L. Smith
12. Frank L. Henaman

The Court reads portions of the indictment to the prospective jurors, and examines the jurors for cause. [54]

B. A. Jacobs is excused for cause, and it is ordered that one more name be drawn, and the name of Charles H. Hahn is drawn. The Court examines the jurors further for cause, and the jurors in the box are passed for cause.

Harrison R. Ward is excused by plaintiff on peremptory challenge; it is ordered that one more name be drawn, and the name of Thos. R. Knudsen is drawn; said juror is examined by the Court for cause, and is passed for cause.

Wm. Murphy is excused by defendants on peremptory challenge; it is ordered that one more name be drawn, and the name of M. E. Barnhill is drawn; said juror is examined and excused for cause; it is ordered that one more name be drawn, and the name of James Loudon is drawn; said juror is examined by the Court for cause and passed for cause.

Roy M. McMahan is excused by plaintiff on peremptory challenge; it is ordered that one more name be drawn, and the name of S. Allen Greer is drawn; said juror is examined by the Court for cause and excused for cause; it is ordered that one more name be drawn, and the name of Thomas A. Gould is drawn; said juror is examined by the Court for cause and passed for cause.

Guy W. Rice is excused by defendants on peremptory challenge; it is ordered that one more name be drawn, and the name of Harry B. McDowell is drawn; said juror is examined by the Court for cause, and passed for cause.

Thomas R. Knudsen is excused by the plaintiff on peremptory challenge; it is ordered that one more name be drawn, and the name of Nels P. Johnson is drawn; said juror is examined by the Court for cause, and passed for cause.

Frank L. Henaman is excused by defendants on peremptory challenge; it is ordered that one more name be drawn, and the name of G. H. Lathrop is drawn; said juror is examined by the Court for cause and passed for cause.

The Government exercises no peremptory challenge, and the defendants excuse G. H. Lathrop on peremptory challenge; it is ordered that one more name be drawn, and the name of Ernest G. Carter is drawn; said juror is examined by the Court for cause and passed for cause. [55]

Ernest G. Carter is excused by plaintiff on peremptory challenge; it is ordered that one more name be drawn, and the name of Albert F. Bolz

is drawn; said juror is examined by the Court for cause and passed for cause.

Albert F. Bolz is excused by defendants on peremptory challenge; it is ordered that one more name be drawn, and the name of Harry Wine is drawn; said juror is examined by the Court for cause and passed for cause.

Charles H. Hahn is excused by defendants on peremptory challenge; it is ordered that one more name be drawn, and the name of David Harrison is drawn; said juror is examined by the Court for cause and passed for cause.

Harry Wine is excused by plaintiff on peremptory challenge; it is ordered that one more name be drawn, and the name of Eugene Lyon is drawn; said juror is examined by the Court for cause and passed for cause.

A. C. Getty is excused by defendants on peremptory challenge; it is ordered that one more name be drawn, and the name of Geo. T. Atchley is drawn; said juror is examined by the Court for cause and excused for cause. It is ordered that one more name be drawn, and the name of Glenn Helms is drawn; said juror is examined by the Court for cause, and passed for cause.

Thomas M. Reid is excused by defendants on peremptory challenge; it is ordered that one more name be drawn, and the name of Clarence B. Hoadley is drawn; said juror is examined by the Court for cause and passed for cause.

David Harrison is excused by plaintiff on peremptory challenge; it is ordered that one more

name be drawn, and the name of D. C. Wright is drawn; said juror is examined by the Court for cause and excused for cause; it is ordered that one more name be drawn, and the name of James J. Walsh, Jr. is drawn; said juror is examined by the Court for cause and passed for cause.

James J. Walsh is excused by defendants on peremptory challenge; it is ordered that one more name be drawn, and the name of Raymond Zens is drawn; said juror is examined by the Court for cause and passed for cause, and there being no further peremptory challenges, the jurors now in the box are accepted and sworn as the jury for the trial of this cause, viz.: [56]

#### THE JURY

1. Nels P. Johnson
2. Raymond Zens
3. Clarence B. Hoadley
4. James Loudon
5. Harry B. McDowell
6. Thos. A. Gould
7. Glenn Helms
8. H. H. Fogwell
9. Paul O. Davis
10. Herbert H. Culling
11. Kenneth L. Smith
12. Eugene Lyon

On motion of Government counsel, it is ordered that one alternate juror be impaneled. The name of Fred Deal is drawn; said juror is examined by



the Court for cause and passed for cause, and there being no challenge, Fred Deal is sworn as alternate juror for this case.

The remaining jurors not impaneled are excused to Thursday, May 6, 1943, at 9:45 A.M., to report in Courtroom No. 3.

At 11:20 A.M. the Court admonishes the jurors, including the alternate juror, that during the progress of this trial and the recesses therein, they are not to speak to anyone or permit anyone to speak to them about this cause, or any matter or thing therewith connected; that until said cause is finally submitted to them for their deliberation under the instructions of the Court they are not to speak to each other about this cause, or any matter or thing therewith connected, or form or express any opinion concerning the merits of the trial until it is finally submitted to them, and the jurors are excused and retire from the Courtroom.

In the absence of the jurors, counsel and Court discuss certain matters, and Attorney Goodman, in behalf of defendants, moves that the Court require the Government to elect which counts the Government will proceed to trial on, and argues in support of motion to elect.

Attorney Norcop argues in opposition to said motion to elect made on behalf of defendants.

The Court orders motion to elect denied as to all defendants.

At 11:30 A.M. court recesses to 11:40 A.M.; court reconvenes; all present as before; the six defendants on trial and the jury and alternate juror are present; it is ordered that trial proceed.

Attorney Norcop makes opening statement to the jury of what the Government expects to be able to prove by the evidence to be offered by the Government.

All defendants' counsel reserve opening statement at this time.

At 12 o'clock noon counsel stipulate that the admonition heretofore given may be deemed made at time of each recess during this trial without necessity of repeating same. The Court further admonishes the jury and recesses to 1:45 P.M. today.

Court reconvenes at 1:45 P.M.; all present as before; the six defendants on trial and the jury and alternate juror are present. It is ordered that trial proceed.

On motion of defendants' counsel, the jury and alternate juror are excused by the Court and retire from the Courtroom, and in the absence of the jury and alternate juror, all others appearing as before, Attorney Sullivan moves to dismiss each of the two counts of the indictment, or that the Court instruct the jury to return a verdict of not guilty as to each defendant on each count.

The Court makes a statement and states that it will permit the Government's counsel to make a further opening statement to the jury, and orders said motions of defendants denied, and an exception allowed each defendant.

The Court and counsel discuss the allegations in the indictment, and at 2:10 P.M., pursuant to the

Court's order, the jury and alternate juror return into court; all present as before, and defendants being present, it is ordered that trial proceed.

Attorney Norcop makes a further statement to the jury on behalf of the Government, supplementing opening statement made this morning of what the Government expects to be able to prove.

The defendants waive the reading of the indictment.

Henry Novisoff is called, sworn, and testifies for the Government.

U. S. Exhibits Nos. 1, 2, 3, 4, and 5 are admitted into evidence.

Said witness Novisoff testifies further.

Lewis C. Kilgore is called, sworn, and testifies for the Government.

William S. Fitzer is called, sworn, and testifies for the Government.

Court recesses at 3:05 P.M. and reconvenes at 3:16 P.M.; all present as before; the six defendants on trial and the jury and alternate juror are present, and counsel so stipulate; it is ordered that trial proceed.

William S. Fitzer, heretofore sworn, resumes the stand and testifies further.

U. S. Exhibit No. 6 is admitted into evidence.

Said witness Fitzer testifies further. [58]

Robert James Campau is called, sworn, and testifies for the Government. George M. Hood is called, sworn, and testifies for the Government.

U. S. Exhibit No. 7 is admitted into evidence.

Claude Garn is called, sworn, and testifies for the Government.



U. S. Exhibit No. 8 is admitted into evidence.

Jack Foster is called, sworn, and testifies for the Government.

U. S. Exhibit No. 9 is admitted into evidence.

Ralph R. Walker is called, sworn, and testifies for the Government.

Mike Kreling is called, sworn, and testifies for the Government.

U. S. Exhibit No. 10 is admitted into evidence.

Said witness Kreling testifies further.

Ralph C. Earnest is called, sworn, and testifies for the Government.

John Dundas is called, sworn, and testifies for the Government.

At 4:32 P.M. the Court reminds the jurors of the admonition heretofore given, and orders the further trial of this cause continued to May 5, 1943, at 10 A.M. and court adjourns until that time. [59]

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At a stated term, to-wit: The February Term, A. D. 1943, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Wednesday the 5th day of May in the year of our Lord one thousand nine hundred and forty-three.

Present: The Honorable Ben Harrison, District Judge.



[Title of Cause.]

No. 15,811—BH Crim.

This cause coming on for further jury trial; Maurice R. Norcop, Esq., Assistant U. S. Attorney, appearing for the Government; Robert S. Shippee, Esq., appearing as counsel for defendant Joseph Lieb; Benj. J. Goodman, Esq., appearing as counsel for defendant Benjamin Rose; Robert J. Sullivan, Esq., appearing as counsel for defendants Mac R. Brown, Phil Taplin, and Sam Weinstein; Paul Angelillo, Esq., appearing as counsel for defendant Louis Vitagliano; A. H. Bargion, Court Reporter, and H. A. Dewing, Court Reporter, being present and reporting the proceedings; the said defendants being present in Court on bond; the Jury and alternate juror are present, and counsel so stipulate; it is ordered that trial proceed.

Douglass F. Scott is called, sworn, and testifies for the Government.

Horace B. Randall is called, sworn, and testifies for the Government.

U. S. Exhibit No. 11 is admitted into evidence.

Said witness Randall testifies further on cross-examination by Attorney Goodman.

Ted W. Mendenhall is called, sworn, and testifies for the Government, and on voir dire examination by Attorney Goodman.

U. S. Exhibits Nos. 12 and 13 are admitted into evidence.

Don Bagley is called, sworn, and testifies for the Government.

Sam Kelber is called, sworn, and testifies for the Government.

U. S. Exhibit No. 14 is admitted into evidence.

Said witness Kelber testifies further on cross-examination by Attorney Goodman and by Attorney Angelillo, and Attorney Sullivan, respectively.

Stella Kelber is called, sworn, and testifies for the Government.

Sam Kelber, heretofore sworn, is recalled, resumes the stand and [60] testifies further on further cross-examination by Attorney Sullivan.

At 10:55 A. M. Court recesses to 11:04 A. M.; Court reconvenes; all present as before; the six defendants on trial, jury and alternate juror are present, and counsel so stipulate; it is ordered that trial proceed.

Bill Soukesian is called, sworn, and testifies for the Government.

U. S. Exhibit No. 15 is admitted into evidence.

Witness Saukesian testifies on cross-examination by Attorney Goodman.

C. A. Humbert is called, sworn, and testifies for the Government.

U. S. Exhibits Nos. 16, 17, 18 and 19 are admitted into evidence.

Said witness Humbert testifies further.

At 12 o'clock noon the Court reminds the jurors of the admonition heretofore given, and recesses to 1:30 P. M.

Court reconvenes at 1:30 P. M.; all present as before; the six defendants on trial and the jury and alternate juror are present, and counsel so stipulate; it is ordered that trial proceed.

C. A. Humbert, heretofore sworn, resumes the stand and testifies further.

Josephine Humbert is called, sworn, and testifies for the Government.

Louis Phillips is called, sworn, and testifies for the Government; the witness is withdrawn, and

Rubin Slavett is called, sworn, and testifies for the Government.

U. S. Exhibit No. 20 is admitted into evidence.

Said witness Slavett testifies on cross-examination by Attorneys Goodman and Angelillo.

J. C. Cooley is called, sworn, and testifies for the Government.

U. S. Exhibits Nos. 21 and 21-A are admitted into evidence.

Witness Cooley testifies on cross-examination by Attorney Goodman.

Sam Parsner is called, sworn, and testifies for the Government.

U. S. Exhibit No. 22 is admitted into evidence.

Said witness Parsner testifies on cross-examination by Attorneys Goodman and Angelillo.

Frank Montgomery is called, sworn, and is withdrawn, and

Jack Foster, heretofore sworn, is recalled, resumes the stand and testifies further for the Government on further direct examination by Attorney Norcop.

U. S. Exhibit No. 23 is admitted into evidence.

[61]

Said witness Foster testifies further on cross-examination by Attorney Sullivan.



Frank Montgomery, heretofore sworn, is recalled, resumes the stand and testifies for the Government on direct examination by Attorney Norcop and on cross-examination by Attorney Sullivan.

At 3:05 P. M. Court recesses and reconvenes at 3:18 P. M.; all present as before; the six defendants on trial, jury and alternate juror are present; it is ordered that trial proceed.

Henry Immerman is called, sworn, and testifies for the Government.

James B. Graham is called, sworn, and testifies for the Government on direct examination by Attorney Norcop and on cross-examination by Attorney Angelillo.

Paul B. Parmelee is called, sworn, and testifies for the Government.

U. S. Exhibit No. 24 is marked for Identification.

Said witness Parmelee testifies on cross-examination by Attorneys Goodman and Angelillo.

Sam Rappan is called, sworn, and testifies for the Government.

U. S. Exhibit No. 25 is marked for identification.

Fred H. Doane is called, sworn, and testifies for the Government on direct examination by Attorney Norcop and on cross-examination by Attorney Goodman.

At 4 P. M. Marie G. Zellner is now present as Court Reporter and reporting the proceedings.

D. J. Hamilton is called, sworn, and testifies for the Government.

U. S. Exhibit No. 26 is admitted into evidence.

Said witness Hamilton testifies on cross-examination by Attorney Goodman.



Defendants' Exhibit A is marked for identification.

At 4:30 P. M. the Court reminds the jurors of the admonition heretofore given and orders the further trial of this cause continued to May 6, 1943, at 10 A. M. and Court adjourns until that time. [62]

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At a stated term, to-wit: The February Term, A. D. 1943, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Thursday the 6th day of May in the year of our Lord one thousand nine hundred and forty-three.

[Title of Cause.]

No. 15,811-Crim.

This cause coming on for further Jury trial of defendants Mac R. Brown, Joseph Lieb, Benjamin Rose, Phil Taplin, Louis Vitagliano and Sam Weinstein; Maurice R Norcop, Esq., Assistant U. S. Attorney, appearing for the Government; Robert S. Shippee, Esq., appearing as counsel for defendant Joseph Lieb; Benj. J. Goodman, Esq., appearing as counsel for defendant Benjamin Rose; Robert J. Sullivan, Esq., appearing as counsel for defendants Mac R. Brown, Phil Taplin, and Sam Weinstein; Paul Angelillo, Esq., appearing as counsel for defendant Vitagliano; A. H. Bargion and H. A. Dewing, Court Reporters, being present and reporting the proceedings; the six defendants on

trial and jury and alternate juror being present, and counsel so stipulate; it is ordered that trial proceed.

Henry L. Doyle is called, sworn, and testifies for the Government on direct examination by Attorney Norcop.

U. S. Exhibit No. 27 is admitted into evidence.

Said witness Doyle testifies on cross-examination by Attorney Goodman.

Donald D. Harwood is called, sworn, and testifies for the Government on direct examination by Attorney Norcop, and on cross-examination by Attorney Goodman.

Norman Irwin is called, sworn, and testifies for the Government on direct examination by Attorney Norcop, and on cross-examination by Attorney Goodman.

U. S. Exhibit No. 28 is admitted into evidence.

Robert Brown is called, sworn, and testifies for the Government on [63] direct examination by Attorney Norcop, and on cross-examination by Attorneys Shippee and Goodman.

At 11:06 A. M. Court recesses and reconvenes at 11:15 A. M.; all present as before; the six defendants on trial and Jury and alternate juror are present, and counsel so stipulate; it is ordered that trial proceed.

Herman Steinberg is called, sworn, and testifies for the Government on direct examination by Attorney Norcop. There is no cross-examination.

Mrs. Lorane Brown is called, sworn, and testifies

for the Government on direct examination by Attorney Norcop and on cross-examination.

Ray H. Paddock is called, sworn, and testifies for the Government on direct examination by Attorney Norcop and on cross-examination by Attorneys Goodman and Sullivan.

At 11:50 A. M. Court recesses to 1:15 P. M. today.

Court reconvenes at 1:28 P. M.; all present as before; the six defendants on trial, and the Jury and alternate juror are present, and counsel so stipulate; it is ordered that trial proceed.

Nathan Levy is called, sworn, and testifies for the Government on direct examination by Attorney Norcop.

On motion of defendants' attorney, it is ordered that the testimony of the witness Levy re purchase of six tires be stricken, and the Court instructs the Jury respecting said testimony stricken.

Witness Levy is cross-examined by Attorneys Goodman and Angelillo.

Norman Irwin, heretofore sworn, is recalled, resumes the stand and testifies further on examination by Attorney Norcop, and on cross-examination by Attorney Goodman.

U. S. Exhibit No. 29 is marked for identification.

William J. Davis is called, sworn, and testifies for the Government on direct examination by Attorney Norcop.

U. S. Exhibit No. 30 is marked for identification.

Said witness Davis testifies on cross-examination by Attorney Goodman.



Leo Isenhower is called, sworn, and testifies for the Government on direct examination by Attorney Norcop, and on cross-examination by Attorney Goodman. The Court grants permission to defendants to make offer of proof in the absence of the jury later. [64]

David M. Hoffman is called, sworn, and testifies for the Government on direct examination by Attorney Norcop and on cross-examination by Attorney Goodman.

At 2:48 P. M. court recesses and reconvenes at 3 P. M.; all present as before; the six defendants on trial and the jury and alternate juror being present, and counsel so stipulate; it is ordered that trial proceed; whereupon,

Jack Foster, heretofore sworn, is again recalled, resumes the stand and testifies further on direct examination by Attorney Norcop.

U. S. Exhibit No. 30, heretofore marked for identification, is admitted into evidence.

Said witness Foster testifies on cross-examination by Attorney Goodman.

On motion of Attorney Norcop, it is ordered that the indictment on both counts as to the defendant, Joseph Lieb, be, and it hereby is, dismissed, and his bond exonerated.

At 4:35 P. M. the Court reminds the jurors of the admonition heretofore given, and orders the further trial of defendants Brown, Rose, Taplin, Vitagliano and Weinstein continued to 10 A. M. May 7, 1943, and Court adjourns until that time. [65]



At a stated term, to-wit: The February Term, A. D. 1943, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Friday the 7th day of May in the year of our Lord one thousand nine hundred and forty-three.

Present: The Honorable: Ben Harrison, District Judge.

[Title of Cause.]

No. 15,811—Crim.

This cause coming on for further jury trial of the defendants Mac R. Brown, Benjamin Rose, Phil Taplin, Louis Vitagliano, and Sam Weinstein; Maurice R. Norcop, Esq., Assistant U. S. Attorney, appearing for the Government; Benj. J. Goodman, Esq., appearing as counsel for the defendant Rose; Robert J. Sullivan, Esq., appearing as counsel for defendants Brown, Taplin and Weinstein; Paul Angelillo, Esq., appearing as counsel for defendant Vitagliano; A. H. Bargion, and H. A. Dewing, Court Reporters, being present and reporting the proceedings; the five defendants on trial, jury and alternate juror are present; and so stipulated by counsel; it is ordered that trial proceed.

On motion of Attorney Goodman, the Court orders the testimony of Mr. and Mrs. Brown stricken, and instructs the jury relative to same, and also orders the testimony of the witness Foster relative to defendant Lieb be stricken, and the jury is instructed relative thereto.

Jack Foster, heretofore sworn, resumes the stand and testifies further on further cross-examination by Attorney Goodman.

Defendants' Exhibits B, C, D, E and F are marked for identification.

Witness Foster testifies on cross-examination by Attorney Angelillo.

Defendants' Exhibit G is marked for identification.

At 11 A.M. court recesses and reconvenes at 11:12 A.M.; all present as before; the five defendants on trial and jury and alternate juror are present; and counsel so stipulate; it is ordered that trial proceed.

Jack Foster resumes the stand and testifies further on further cross-examination by Attorney Angelillo and on redirect examination by Attorney Norcop.

Samuel K. Dowden is called, sworn, and testifies for the Government [66] on direct examination by Attorney Norcop and on cross-examination by Attorneys Goodman and Angelillo.

Wallis S. Storms is called, sworn, and testifies for the Government on direct examination by Attorney Norcop.

U. S. Exhibit No. 31 is marked for identification; U. S. Exhibit No. 32 is admitted into evidence.

Said witness Storms testifies on cross-examination by Attorney Goodman. The Government rests.

At 11:55 A.M. the Court reminds the jurors of the admonition heretofore given, and excuses the jurors until 2 P.M. today, and the jurors retire from the courtroom. In the absence of the jury and

alternate juror, counsel present proposed instructions to the Court.

The Court makes a statement and orders that the Government elect between the two counts of the indictment, which it will proceed on, and states that the Court is now of the opinion that this case should proceed and be given to the jury as to all of the five defendants now on trial.

Attorney Norcop states that the Government elects to stand on count one of the indictment and that the trial proceed on that count only.

The Court orders that the trial will proceed as to count one as to the remaining five defendants, and that it is hereby ordered that count two of the indictment as to the remaining five defendants is dismissed.

Attorney Goodman separately moves to strike certain testimony and evidence, on behalf of all defendants, and separately moves to strike certain testimony and evidence, on behalf of the defendant Rose only, and states the grounds of each of said motions; and the Court orders each separate motion denied and an exception is noted for each defendant, and reflected by the court reporter's shorthand notes.

Attorney Goodman makes a further statement, and requests a recess at this time until 1:30 P.M. today.

The Court makes a statement and the Court at the hour of 12:10 P.M. recesses until 1:30 P.M. today.

At 1:30 P.M. court reconvenes; appearances same as before noted; the five defendants on trial are



present; the jury and alternate juror are absent; it is ordered that counsel proceed.

Attorney Goodman states that the defendants have decided that they [67] will not put on any evidence, and separately moves, on behalf of defendant Rose, to strike certain testimony of certain witnesses, and separately moves that the Court instruct the jury to return a verdict of not guilty as to the defendant Rose.

The Court orders each of said separate motions denied, and an exception allowed.

Attorney Sullivan moves, on behalf of defendant Brown, Taplin and Weinstein, to strike certain testimony of certain witnesses, and separately moves that the Court instruct the jury to return a verdict of not guilty as to each of the said three defendants.

The Court orders each of said motions on behalf of said three defendants denied, and exception is allowed each defendant.

Attorney Angelillo moves to strike, on behalf of defendant Vitagliano, certain evidence, and moves that the Court instruct the jury to return a verdict of not guilty as to said defendant.

The Court orders each of said motions on behalf of defendant Vitagliano denied, and an exception allowed.

At 1:40 P.M. court recesses until 2 P.M. today.

Court reconvenes at 2 P.M.; all present as before; the five defendants on trial and the jury and alternate juror are present; it is ordered that trial proceed.

All defendants rest.



The Court makes a statement and reminds the jurors of the admonition heretofore given, and orders the further trial of the five defendants on count 1 continued to 11 A.M. May 10, 1943, and the jury and alternate juror are excused and retire from the courtroom.

In the absence of the jury, the Court and counsel discuss the time to be allowed for arguments to the jury, and at 2:10 P.M. court adjourns. [68]

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At a stated term, to-wit: The February Term, A. D. 1943, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 10th day of May in the year of our Lord one thousand nine hundred and forty-three.

Present: The Honorable: Ben Harrison, District Judge.

[Title of Cause.]

No. 15,811-BH—Crim.

This cause coming on for further jury trial of the defendants Mac R. Brown, Benjamin Rose, Phil Taplin, Louis Vitagliano, and Sam Weinstein; Maurice Norcop Esq., Asst. United States Attorney, appearing as counsel for the Government; Benj. J. Goodman, Esq., appearing as counsel for the defendant Rose; Robert J. Sullivan, Esq., appearing as counsel for defendants Brown, Taplin, and Wein-

stein; Paul Angelillo, Esq., appearing as counsel for the defendant Vitagliano; A. H. Bargion, Court Reporter, being present and reporting the proceedings; the said named defendants being present in court on bond; the jury and alternate juror are present, and counsel to stipulate; the Court makes a statement to the jury as to its order requiring the Government to elect and that the Government has elected to stand on count 1; it is ordered that counsel for the Government proceed with his argument to the jury.

At 11:04 A.M. Attorney Norcop argues to the jury on behalf of the Government.

At 12 o'clock noon the Court reminds the jurors of the admonition heretofore given, and recesses to 1 P.M. today.

Court reconvenes at 1 P.M.; all present as before; the five defendants on trial and the jury and alternate juror are present, and all counsel so stipulate; it is ordered that counsel proceed with argument to the jury.

Attorney Goodman argues to the jury on behalf of defendant Rose.

At 2 P.M. Attorney Angelillo argues to the jury on behalf of defendant Vitagliano.

At 2:31 P.M. Attorney Sullivan argues to the jury on behalf of defendants Brown, Taplin, and Weinstein. [69]

At 2:57 P.M. court recesses and reconvenes at 3:10 P.M.; all present as before; the five defendants on trial and the jury and alternate juror are present,

and all counsel so stipulate; it is ordered that trial proceed.

Attorney Norcop argues to the jury on behalf of the Government in closing.

At 3:34 P.M. the Court instructs the jury and alternate juror on the law of the case. There are no objections to the Court's instructions as given.

At 3:50 P.M. bailiffs Saunders and Ward, pursuant to the Court's order, are sworn as officers to care for the jury. The alternate juror is discharged and excused until further notice to report, and at 3:53 P.M. blank form of verdict and indictment, and paper exhibits, are given to the jury and the jury retires to the jury room to deliberate upon its verdict, in charge of said officers so sworn.

At 4:50 P.M., pursuant to the Court's order, Frank J. Turner, bailiff, is sworn as an officer to care for the jury.

At 5:03 P.M. the jury returns into court; all present as before; the five defendants are present with their respective counsel; the jury is present, and counsel so stipulate. The Court inquires of the jury if it has agreed upon a verdict, and the jury through their foreman states that it has, and pursuant to the Court's order the verdict is presented and read by the Clerk, and upon motion of defendants' counsel the jury is polled, each juror being asked if the verdict as presented and read by the clerk is his verdict, and each juror answers "yes"; and thereupon, the Court orders the verdict filed and entered herein, being as follows: [70]

[Verdict set out in full at page 93 of this printed transcript.]

The Court orders the jury discharged and excused from further service in this Court until notified.

The Court makes a statement, and orders this cause as to each of the five defendants referred to the Probation Officer for pre-sentence investigation and report, and hearing on said reports and time of sentence of each of the five defendants on count 1 is continued to Monday, May 24, 1943, at 9:30 A.M., and the defendants are permitted to remain at liberty on their bonds now on file in cause No. 15,659—Crim., U. S. vs. Brown, et al. [71]

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[Title of District Court and Cause.]

#### STIPULATION RE EXHIBITS

It Is Hereby Stipulated by and between counsel for Plaintiff and Appellee and counsel for Defendant and Appellant, Benjamin Rose, that respecting the exhibits mentioned in the proposed Bill of Exceptions to be filed herein, an order may be entered by this court certifying all of the original exhibits mentioned in said Bill of Exceptions which are not reproduced therein as a part thereof, to the United States Circuit Court of Appeals for the Ninth Judicial Circuit.



Dated: June 16, 1943.

CHARLES H. CARR

United States Attorney

By MAURICE NORCOP

Attorney for Plaintiff.

Assistant United States Atty.

BENJAMIN J. GOODMAN

Attorney for Defendant and

Appellant, Benjamin Rose.

[Endorsed]: Filed June 16, 1943. [72]

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[Title of District Court and Cause.]

ORDER RE EXHIBITS IN BILL OF  
EXCEPTIONS

Pursuant to stipulation heretofore entered into between counsel for Plaintiff and Appellee and counsel for the Defendant and Appellant, Benjamin Rose, that respecting the exhibits in the proposed Bill of Exceptions to be filed herein,

It Is Ordered, that the Clerk of this court be, and hereby is, directed to certify to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, all such original exhibits herein which are not incorporated in said Bill of Exceptions as a part thereof.

Dated this 16 day of June, 1943.

BEN HARRISON

Judge of the United States

Circuit Court.

[Endorsed]: Filed June 16, 1943. [73]

[Title of District Court and Cause.]

STIPULATION EXTENDING TIME TO  
SETTLE BILL OF EXCEPTIONS

It Is Hereby Stipulated by and between the United States of America, Plaintiff and Appellee, in the above entitled cause acting through its counsel of record, and Benjamin Rose, Defendant and Appellant in the above entitled action, and his counsel,

First: That the time within which the Bill of Exceptions in the above entitled action, on behalf of the Appellant, be settled, is extended to and including the 10th day of August, 1943.

Second: That Defendant and Appellant will file his Assignment of Errors and proposed Bill of Exceptions on or before the 16th day of July, 1943.

Third: That the Plaintiff and Appellee file its proposed amendments, if any, to said Bill of Exceptions, on or before the 1 day of Aug., 1943.

Dated: June 16 1943.

CHARLES H. CARR,

United States Attorney

By 'MAURICE NORCOP

Assistant United States Atty.

Attorney for Plaintiff.

BENJAMIN J. GOODMAN

Attorney for Defendant and

Appellant, Benjamin Rose.

[Endorsed]: Filed June 16, 1943. [74]

ORDER EXTENDING TIME WITHIN WHICH  
TO SETTLE BILL OF EXCEPTIONS AND  
FILE ASSIGNMENT OF ERRORS

Upon reading and filing the stipulation of counsel for Plaintiff and Appellee, and counsel for Defendant and Appellant, Benjamin Rose; and it is also otherwise appearing to the court that there is good cause therefor,

It Is Hereby Ordered, that the time within which the Bill of Exceptions in the above entitled action on behalf of the Appellant be settled is extended to and including the 10 day of August 1943;

It is Further Ordered, that the Defendant and Appellant will file his Assignment of Errors and proposed Bill of Exceptions on or before the 16 day of July 1943; and

It Is Further Ordered that the Plaintiff and Appellee file its proposed amendments, if any, to said Bill of Exceptions on or before the 1 day of Aug. 1943.

Dated: June 16 1943.

BEN HARRISON

United States District Judge.

[Endorsed]: Filed June 16, 1943. [75]

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[Title of District Court and Cause.]

STIPULATION TO EXTEND TIME TO  
SETTLE BILL OF EXCEPTIONS

It Is Hereby Stipulated by and between the United States of America, plaintiff and appellee

in the above-entitled cause, acting through its counsel of record, and Louis Vitagliano, defendant and appellant, through his counsel, Morris Lavine:

First: That the time within which the Bill of Exceptions in the above-entitled action, on behalf of the appellant, may be settled, is extended to and including the 10th day of August, 1943.

Second: That defendant and appellant will file his assignment of errors and proposed bill of exceptions on or before the 16th day of July, 1943.

Third: That the plaintiff and appellee will file its proposed amendments, if any, to said bill of exceptions, on or before the 1st day of August, 1943.

Dated: June 16, 1943.

CHARLES H. CARR,

United States Attorney

By MAURICE NORCOP

Attorney for Plaintiff and  
Appellee

MORRIS LAVINE

Attorney for Defendant and  
Appellant Louis Vitagliano

[Endorsed]: Filed June 17, 1943. [76]

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[Title of District Court and Cause.]

ORDER EXTENDING TIME WITHIN WHICH  
TO SETTLE BILL OF EXCEPTIONS AND  
FILE ASSIGNMENT OF ERRORS

Upon reading and filing the stipulation of counsel for plaintiff and appellee, and counsel for defendant



and appellant Louis Vitagliano, and it also otherwise appearing to the court that there is good cause therefor,

It Is Hereby Ordered that the time within which the bill of exceptions in the above-entitled action on behalf of the appellant be settled is extended to and including the 10th day of August, 1943; and

It Is Further Ordered that the defendant and appellant file his assignment of errors and proposed bill of exceptions on or before the 16th day of July, 1943; and

It Is Further Ordered that the plaintiff and appellee file its proposed amendments, if any, to said bill of exceptions on or before the 1st day of August, 1943.

BEN HARRISON

United States District Judge

[Endorsed]: Filed June 17, 1943. [77]

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[Title of District Court and Cause.]

### STIPULATION RE EXHIBITS

It Is Hereby Stipulated by and between counsel for plaintiff and appellee and counsel for defendant and appellant, Louis Vitagliano, that respecting the exhibits mentioned in the proposed bill of exceptions to be filed herein, an order may be entered by this court certifying all of the original exhibits mentioned in said bill of exceptions which are not reproduced therein as a part thereof, to the United

States Circuit Court of Appeals, for the Ninth  
Judicial Circuit.

Dated: June 16, 1943.

CHARLES H. CARR,

United States Attorney

By MAURICE NORCOP

Attorneys for Plaintiff

MORRIS LAVINE

Attorney for Defendant Louis  
Vitagliano

[Endorsed]: Filed June 17, 1943. [78]

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[Title of District Court and Cause.]

ORDER RE EXHIBITS IN BILL OF  
EXCEPTIONS

Pursuant to a stipulation heretofore entered into between counsel for plaintiff and appellee and counsel for the defendant and appellant, Louis Vitagliano, that respecting the exhibits in the proposed bill of exceptions to be filed herein,

It Is Ordered that the clerk of this court be, and he hereby is, directed to certify to the United States Circuit Court of Appeals, for the Ninth Circuit, all such original exhibits herein which are not incorporated in said bill of exceptions as a part thereof.

Dated : June 17, 1943.

BEN HARRISON

Judge of the United States  
District Court

[Endorsed]: Filed June 17, 1943. [79]

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[Title of District Court and Cause.]

PRAECIPE

To the Clerk of the District Court of the United  
States, Southern District of California, Central  
Division:

You will please prepare the following record in  
the above-entitled cause for the Ninth Circuit Court  
of Appeals:

1. Indictment;
2. Demurrer of Benjamin Rose to Indictment;
3. Demurrer of Louis Vitagliano to Indictment;
4. Demand for Bill of Particulars by Benjamin  
Rose;
5. Demand for Bill of Particulars by Louis  
Vitagliano;
6. Notice of Motion for Demand for Bill of Par-  
ticulars by Benjamin Rose;
7. Notice of Motion for Demand for Bill of  
Particulars by Louis Vitagliano;
- 7a. All clerk's minutes of proceedings;
8. Minutes and Rulings on Hearing of Demurrer  
and Demand for Bill of Particulars by Benjamin  
Rose and Louis Vitagliano;

9. Verdicts;

10. Judgments and Commitments of Benjamin Rose and Louis Vitagliano;

11. Motions in Arrest of Judgment of Benjamin Rose and Louis Vitagliano; [80]

12. Minutes and Rulings on Motions of Arrest of Judgments of Benjamin Rose and Louis Vitagliano;

13. Notices of Appeal of Benjamin Rose and Louis Vitagliano;

14. Stipulation and Order Consolidating Appeals of Benjamin Rose and Louis Vitagliano;

15. Bill of Exceptions and Assignment of Errors;

16. This Praecipe.

**MORRIS LAVINE**

Attorney for Appellants

Received copy of the within Praecipe this 17th day of December, 1943.

**CHARLES H. CARR**

United States Attorney

By **MARY WENTWORTH**

[Endorsed]: Filed Dec. 17, 1943. [81]

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[Title of District Court and Cause.]

**CERTIFICATE OF CLERK TO  
SUPPLEMENTAL TRANSCRIPT**

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of



California, do hereby certify that the foregoing pages numbered from 49 to 82 inclusive contain full, true and correct copies of: Notice of Motion of Benjamin Rose and Demand for Bill of Particulars; Notice of Motion of Louis Vitagliano et al for Demand for Bill of Particulars; Minute Orders Entered May 4, 1943, May 5, 1943, May 6, 1943, May 7, 1943 and May 10, 1943 respectively; Stipulation re Exhibits; Order re Exhibits in Bill of Exceptions; Stipulation Extending Time for defendant Benjamin Rose to Settle Bill of Exceptions; Order Extending Time within which defendant Benjamin Rose may Settle Bill of Exceptions and File Assignment of Errors; Stipulation Extending Time for defendant Louis Vitagliano to Settle Bill of Exceptions; Order Extending Time within which defendant Louis Vitagliano may Settle Bill of Exceptions and File Assignment of Errors; Stipulation re Exhibits; Order re Exhibits in Bill of Exceptions; and Praecipe which, together with Original Bill of Exceptions, Original Assignments of Error, Original Exhibits and the Transcript of Record heretofore certified on May 27, 1943 constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit. I further certify that my fees for preparing, comparing, correcting and certifying the foregoing Supplemental Record amount to \$14.30 which sum has been paid to me by Appellants.

Witness my hand and the seal of said District Court this 5 day of April, 1944.

[Seal] EDMUND L. SMITH, Clerk

By 'THEODORE HOCKE

Deputy Clerk.

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In the United States Circuit Court of Appeals  
for the Ninth Circuit

No. 10445

BENJAMIN ROSE and LOUIS VITAGLIANO,  
Appellants,

vs.

UNITED STATES OF AMERICA,  
Appellee.

AFFIDAVIT FOR ENLARGEMENT OF TIME  
TO LODGE BILL OF EXCEPTIONS, ETC.

State of California

County of Los Angeles—ss.

Morris Lavine, being first duly sworn deposes and says:

That he is the attorney for the appellants in the above entitled case; that the time within which to lodge the proposed bill of exceptions has been fixed for July 16, 1943, by the United States District Judge Ben Harrison, and the time within which appellee may file amendments thereto has been set for August 10, 1943.

That affiant has had two stenographers working on the proposed bill of exceptions; that the Chief Justice of the Supreme Court of California asked affiant to come to San Francisco on the death penalty case of *People v. William Leva Hough*, in which that court vacated the submission and set the case for argument in San Francisco on July 6, 1943, and that owing to transportation problems affiant did not return to Los Angeles until July 9, 1943;

That affiant also filed a motion for a remand of the case of *Zap v. United States* in the Ninth Circuit Court of Appeals, to which a response has been filed, requiring corrections and additions to said motion to be presented to the Ninth Circuit Court of Appeals.

That upon his return to Los Angeles affiant was engaged in the preparation for trial of the case of *People v. De Vernaza*, set for July 12th in Division 5 of the Municipal Court of the City of Los Angeles.

Wherefore, affiant prays that this Honorable Court enlarge the time within which appellants may lodge their proposed bill of exceptions to September 2, 1943; that the time within which appellee may file its proposed amendments thereto be enlarged to September 17, 1943; that the time within which the proposed bill of exceptions may be approved and settled by the court be fixed as September 30, 1943; and that the time within which the assignments of error may be filed be fixed as September 30, 1943.

Dated: July 13, 1943.

MORRIS LAVINE

Subscribed and sworn to before me this 13th day of July, 1943.

ZOA L. ZACCHE

Notary Public in and for said  
County and State

Received copy of within this 9th day August and of domini 1943.

CHARLES H. CARR

By MISS ALLEN  
(J. ROGUS)

[Endorsed]: Filed Aug. 9, 1943.

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[Title of Circuit Court of Appeals and Cause.]

ORDER ENLARGING TIME TO LODGE BILL  
OF EXCEPTIONS

Upon reading the affidavit of Morris Lavine, and good cause appearing therefor,

It Is Hereby Ordered that the time within which the appellants' proposed bill of exceptions may be lodged in the United States District Court, Southern District of California, Central Division, be enlarged to September 2, 1943, the date within which appellee may file its proposed amendments thereto be enlarged to September 17, 1943, and the date the bill of exceptions may be approved and settled by the court be fixed as September 30, 1943; and that the time within the proposed assignments of errors may be filed be fixed as September 30, 1943.



Dated: July 13, 1943.

(Signed) ALBERT LEE STEPHENS

Judge

Received copy within this 9th day of August and of domini 1943.

CHARLES H. CARR,  
JANICE ROGUS

[Endorsed]: Filed Aug. 9, 1943.

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At a stated term, to wit: The October Term 1942, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Monday the thirtieth day of August in the year of our Lord one thousand nine hundred and forty-three.

Present:

Honorable Francis A. Garrecht, Circuit Judge,  
Presiding,

Honorable William Denman, Circuit Judge,

Honorable William H. Healy, Circuit Judge.

[Title of Cause.]

No. 10445

ORDER EXTENDING TIME TO FILE ASSIGNMENTS OF ERROR AND TO SETTLE AND FILE BILL OF EXCEPTIONS

Upon consideration of the motion of appellants, and affidavit of Mr. Morris Lavine, counsel for

appellants in support thereof, and by direction of the Court,

It Is Ordered that the time within which appellants may lodge their proposed bill of exceptions herein be, and hereby is extended to and including October 15, 1943; that the appellee may have to and including October 25, 1943 within which time to propose any amendments thereto, and that the bill of exceptions may be settled and filed, and the assignments of error filed on or before October 30, 1943.

I Hereby Certify that the foregoing is a full, true, and correct copy of an original Order made and entered in the within-entitled cause.

Attest my hand and the seal of the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 30th day of August, 1943.

[Seal]                      PAUL P. O'BRIEN,

Clerk, U. S. Circuit Court of Appeals for the Ninth Circuit.

[Endorsed]: Filed Aug. 31, 1943.

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[Title of Circuit Court of Appeal and Cause.]

AFFIDAVIT FOR ENLARGEMENT OF TIME  
AND ORDER

ORDER

Upon reading the within affidavit of Morris Lavine, and good cause appearing therefor,

It Is Ordered that the time within which to lodge the proposed bill of exceptions be enlarged to and including December 1, 1943, together with assignments of errors; that the appellee have to December 15th to propose amendments thereto, and that the Court have to December 30th within which to settle the same.

Dated: October 14, 1943.

(s) CURTIS D. WILBUR

Judge.

(s) WILLIAM DENMAN

(s) ALBERT LEE STEPHENS

### AFFIDAVIT FOR ENLARGEMENT OF TIME

State of California

County of Los Angeles—ss.

Morris Lavine, being first duly sworn deposes and says:

That the time within which to lodge the proposed bill of exceptions in the above-entitled case has been fixed for October 15, 1943 ,and for the government to propose amendments thereto for October 25th, with five days thereafter for the Court to settle the same;

That affiant is engaged in a hearing on writ of error coram nobis before the Honorable William McKay to set aside the death penalty in the case of *People v. Lyle Gilbert, et al*; that he has also been engaged in various trials and hearings in other courts; that he is preparing a very lengthy bill of exceptions in the case of *United States v. Zap*

on appeal to this court, due October 21st, and is preparing several briefs both in the District Court of Appeal and the Supreme Court; that this case involves several intricate and interesting points of law concerning O.P.A. rules and regulations; that stenographic help is difficult to obtain, and affiant needs 45 days additional time within which to complete and lodge said bill of exceptions and assignments of error.

Wherefore, affiant prays that this Honorable Court enlarge the time within which appellant may lodge the bill of exceptions in this cause and assignments of error to and including December 1, 1943; that appellee may have to December 15th to propose amendments thereto, and that the Court may have to December 30th to settle the same.

MORRIS LAVINE

Subscribed and sworn to before me this 12th day of October, 1943.

ZOA L. ZACCHE.

Notary Public in and for said  
County and State.

A true copy. Attest. Oct. 14, 1943.

[Seal] PAUL P. O'BRIEN.

[Endorsed]: Filed Oct. 14, 1943. Paul P. O'Brien, Clerk.

[Endorsed]: Filed Oct. 14, 1943. Edmund L. Smith, Clerk, by Irwin Hames, Deputy Clerk.



[Title of Circuit Court of Appeals and Cause.]

AFFIDAVIT FOR ENLARGEMENT OF TIME  
AND ORDER ENLARGING TIME

ORDER ENLARGING TIME

Upon reading the affidavit of Morris Lavine, and  
good cause appearing therefor,

It Is Ordered that the time within which ap-  
pellants may lodge the proposed bill of exceptions  
and assignments of error be enlarged to Decem-  
ber 20, 1943; that the appellee have to January  
10 to propose amendments thereto, and that the  
Court have to January 20th within which to settle  
the same.

Dated: November 27, 1943.

ALBERT LEE STEPHENS,  
Judge.

CURTIS D. WILBUR,  
Senior United States Circuit  
Judge.

FRANCIS A. GARRECHT,  
United States Circuit Judge.

A True Copy. Attest: Dec. 3, 1943.

PAUL P. O'BRIEN,  
Clerk.

[Endorsed]: Filed Dec. 3, 1943. Paul P. O'Brien,  
Clerk.

## AFFIDAVIT FOR ENLARGEMENT OF TIME

State of California,

County of Los Angeles—ss.

Morris Lavine, being first duly sworn, deposes and says:

That he is the attorney for the above-named appellants; that the case involves intricate questions of law affecting the Office of Price Administration; that the case was tried by other attorneys and affiant is studying the record and all of the assignments made prior to and during the trial of the case for the purpose of getting up a proper assignment of errors which must be lodged with the bill of exceptions;

That in order to prepare a proper assignment of errors covering the intricate questions involved affiant needs 30 days additional time.

Wherefore, affiant prays that this Honorable Court extend the time within which to lodge the proposed bill of exceptions and assignments of error in this case to and including December 30, 1943.

MORRIS LAVINE

Subscribed and sworn to before me this 27 day of November, 1943.

ZOA L. ZACCHE,

Notary Public in and for said County and State.

[Endorsed]: Filed Dec. 4, 1943. Edmund L. Smith, Clerk, by John A. Childress, Deputy Clerk.

[Title of Circuit Court of Appeals and Cause.]

AFFIDAVIT FOR ENLARGEMENT OF TIME.  
STIPULATION AND ORDER ENLARG-  
ING TIME

ORDER ENLARGING TIME

Upon reading the affidavit of Ernest A. Tolin,  
and good cause appearing therefor,

It Is Ordered that the time within which ap-  
pellee may lodge amendments to the proposed Bill  
of Exceptions and Assignments of Error be en-  
larged to February 10, 1944, and that the Court  
have to and including February 28, 1944, within  
which to settle the same.

Dated: January 5th, 1944.

ALBERT LEE STEPHENS,  
United States Circuit Judge.  
CURTIS D. WILBUR

A True Copy. Attest: Jan. 10, 1944.

PAUL P. O'BRIEN,  
Clerk.

[Endorsed]: Filed Jan. 10, 1944. Paul P.  
O'Brien, Clerk.

## AFFIDAVIT FOR ENLARGEMENT OF TIME

State of California,

County of Los Angeles—ss.

Ernest A. Tolin, being first duly sworn, deposes and says:

That he is the Assistant United States Attorney assigned to the preparation of the above entitled case; that at the trial of the case the Government was represented by an Assistant United States Attorney who is not at this time a member of the staff of the United States Attorney's office; that there is no one now on the staff of the United States Attorney's office who participated at the trial of the cause; that a proposed Bill of Exceptions consisting of 318 pages was received by the office of the United States Attorney on December 18, 1943; that the time within which the appellee may propose amendments has heretofore been fixed as January 10, 1944; that the transcript consists of 650 pages and that at least 35 exhibits, many of them consisting of several pages, were introduced at the trial of the case; that in order to prepare proper proposed amendments to said Bill of Exceptions affiant needs 30 days additional time.

Wherefore, affiant prays that this Honorable Court extend the time within which to lodge proposed amendments to the Bill of Exceptions in this case to and including the 10th day of February, 1944.

ERNEST A. TOLIN



Subscribed and sworn to before me this 4 day of January, 1944.

[Seal]                      MARY M. DONETTI,  
Notary Public in and for the said County and  
State.

### STIPULATION

It is hereby stipulated that appellee may have to and including the 10th day of February, 1944, within which to propose amendments to appellants proposed Bill of Exceptions herein, and that the District Court have to and including February 28, 1944, to settle and engross the same.

CHARLES H. CARR,  
United States Attorney.

By ERNEST A. TOLIN,  
Assistant United States At-  
torney.

MORRIS LAVINE,  
Attorney for Appellants.

[Endorsed]: Filed Jan. 11, 1944. Edmund L. Smith, Clerk, by Irwin Hames, Deputy Clerk.

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[Title of Circuit Court of Appeals and Cause.]

### ORDER

Upon reading and filing the stipulation of the United States of America and Benjamin Rose and Louis Vitagliano, by their respective counsel, and the Court being fully advised in the premises and good cause appearing therefor,

It Is Hereby Ordered that the time within which the District Court may settle the bill of exceptions in this cause is enlarged and extended to and including March 26, 1944, and the time within which the District Court may engross said bill of exceptions as settled is enlarged and extended to April 5, 1944.

Dated: February 25, 1944.

CURTIS D. WILBUR,  
ALBERT LEE STEPHENS,  
U. S. Circuit Court Judges.

A True Copy. Attest: Feb. 28, 1944.

PAUL P. O'Brien,  
Clerk.

[Endorsed]: Filed Feb. 28, 1944. Paul P. O'Brien, Clerk.

[Endorsed]: Filed March 2, 1944. Edmund L. Smith, Clerk, by Irwin Hames, Deputy Clerk.

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[Title of District Court and Cause.]

## BILL OF EXCEPTIONS

## NOTICE OF HEARING

To: Charles H. Carr, United States Attorney:

Please Take Notice that the within Bill of Exceptions of the defendants and appellants, Benjamin Rose and Louis Vitagliano, will be brought on for settlement before the Honorable Ben Harrison, District Judge, in his court room, on January 14th,

1944, at the hour of 10 A. M., or as soon thereafter as said matter can be heard.

Dated: December 17, 1943.

MORRIS LAVINE,

Attorney for Defendants and  
Appellants.

Be it remembered that the following pleadings and documents were filed and the following minutes made and entered herein in addition to those pleadings and minutes which are a part of the Clerk's record on appeal. [1\*]

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United States District Court, Southern District of  
California, Central Division

No. 15811

THE UNITED STATES OF AMERICA

vs.

MAC R. BROWN, et al.

INDICTMENT

Viol.: Title 18, U.S.C., Sec. 88

At a stated term of said court, begun and holden at the City of Los Angeles, County of Los Angeles, within and for the Central Division of the Southern District of California, on the second Monday of

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\*Page numbering appearing at foot of page of original Bill of Exceptions.

September, in the year of our Lord one thousand nine hundred and forty-two:

The grand jurors for the United States of America, impaneled and sworn in the Central Division of the Southern District of California, and inquiring for the Southern District of California, upon their oaths present:

1. Mac R. Brown, Joseph Lieb, Benjamin Rose, Phil Reznice, Phil Taplin, Louis Vitagliano, and Sam Weinstein are hereby indicted and made defendants herein. At all times herein mentioned, each of said defendants has been a resident of the County of Los Angeles, State of California, within the Central Division of said District.

2. All of the acts of the President of the United States of America herein averred were done by him pursuant to power and authority in him vested by the Congress by virtue of that Act of Congress approved June 28, 1940 (Public Law No. 671, 76th Congress, 3rd Session, as amended), entitled "An [2] Act to Expedite National Defense, and for other Purposes," (54 Stat. 676, 1940) as amended by an Act of Congress to amend the same, approved May 31, 1941, (Public Law No. 89, 77th Congress, Ch. 157, 1st Session, H. R. 4534) (55 Stat. 236, 1941), and as amended by Title III of the Second War Powers Act, 1942 (Public Law No. 507, 77th Congress, 2d Session, March 27, 1942).

3. At all times herein mentioned prior to January 24, 1942, the Office of Production Management was an agency of the United States of America duly created by the President and engaged in pro-



mulgating and administering priority and allocation regulations with respect to materials required for the prosecution of the war, including rubber and rubber products.

4. The Office of Price Administration is and was at all times hereinafter mentioned an agency of the United States of America duly created by the President and engaged in promulgating and administering regulations deemed necessary for national defense and prosecution of the war, and since December 27, 1941, has been continuously engaged in enforcing and administering rubber tire and tube rationing regulations.

5. On December 10, 1941, said Office of Production Management made, issued and promulgated an order entitled "Supplementary Order No. M-15-b," prohibiting the sale throughout the United States of America of new rubber tires [3] and tubes from that date until December 22, 1941, except when sold as part of new or used vehicles.

6. On December 19, 1941, said Office of Production Management made, issued and promulgated an order entitled "Amendment No. 1 to Supplementary Order No. M-15-b to Restrict the Use of Rubber," which extended said prohibition of sales of new rubber tires and tubes from December 22, 1941, to January 5, 1942, and prohibited the sale of new rubber tires and tubes as parts of used vehicles.

7. On December 27, 1941, said Office of Production Management, with the written approval of the President of the United States of America, made, issued and promulgated an order entitled "Supple-

mentary Order No. M-15-c to Restrict Transactions in New Rubber Tires, Casings and Tubes," which established rubber tire and tube rationing regulations prohibiting all further sales and deliveries of new rubber tires and tubes on and after that date except in accordance with such regulations, and which authorized the Office of Price Administration to enforce and carry out said regulations and to adopt, promulgate and enforce further regulations for that purpose, and provided that said Office of Price Administration might exercise such powers through local tire rationing boards of its own creation and appointment.

8. On December 30, 1941, said Office of Price Administration regularly made, issued and promulgated rubber tire regulations effective on and after said December 30, 1941, [4] which prohibited the sale, lease, delivery, trade and transfer throughout the United States, of new rubber tires, casings and tubes to consumers and other persons without certificates from such local tire rationing boards.

9. On January 16, 1942, the President of the United States made, issued and promulgated Executive Order No. 9024, which created the War Production Board as an agency of the United States of America.

10. On January 24, 1942, the President of the United States made, issued and promulgated Executive Order No. 9040, which transferred all powers and duties of the Office of Production Management to the War Production Board.

11. On January 24, 1942, the War Production Board, with the written approval of the President of the United States, made, issued and promulgated Directive No. 1, which authorized the Office of Price Administration to exercise the powers and duties conferred upon the President to ration materials, including rubber and rubber products.

12. On February 11, 1942, the said Office of Price Administration made, issued and duly promulgated "Tire Rationing Regulations (Revised)" effective February 19, 1942, and superceding Tire Rationing Regulations theretofore issued on December 30, 1941, which said regulations effective February 19, 1942, prohibited the sale, lease, loan, trade, shipment, delivery or transfer of new rubber tires and tubes or of retreaded or recapped rubber tires without certificates issued [5] by local tire rationing boards and except as otherwise provided in said regulations. Said regulations were issued under Subsection (a) of Section 2 of Title III of Pub. L. 507, 77th Cong. approved March 27, 1942, and commonly known as the Second War Powers Act.

13. Beginning on or about December 12, 1941, and continuing thereafter up to and including the date of the return of this indictment, the defendants Mac R. Brown, Joseph Lieb, Benjamin Rose, Phil Rezniche, Phil Taplin, Louis Vitagliano and Sam Weinstein, and other persons whose names are to the Grand Jurors unknown, in the County of Los Angeles, State of California, division and district aforesaid, did unlawfully, wilfully, knowingly, cor-



ruptly, fraudulently and feloniously engage in a conspiracy to commit offenses against the United States, that is to say, to sell, trade, lease, ship and transfer new rubber tires, casings, and tubes to consumers and other persons in violation of the statute, executive orders, regulations and directives hereinbefore referred to.

14. The defendants have committed and performed within the County of Los Angeles, State of California, the following overt acts in furtherance of and in order to effect the objects of said conspiracy:

(a) On or about May 28, 1942, the defendants Phil Taplin, Sam Weinstein and Louis Vitagliano caused to be transported to and stored in a building at 3100 East Wabash Avenue, Los Angeles, California, approximately [6] three hundred (300) new rubber automobile tires.

(b) On or about July 21, 1942, at Los Angeles, California, defendant Benjamin Rose purchased and took possession of approximately forty-eight (48) new rubber automobile tires and approximately one hundred and thirty (130) new rubber tubes from one Mike Kreling.

(c) That on or about August 1, 1942, at Los Angeles, California, defendant Benjamin Rose rented premises for the storage of new rubber automobile tires and tubes and falsely and fraudulently represented to the agent of the owner of said premises that said premises



were to be used for the storage of certain equipment and furniture in which he, said Benjamin Rose, was dealing.

(d) That on or about August 2, 1942, at Ontario, California, defendants Benjamin Rose and Sam Weinstein arranged for the purchase by defendant Benjamin Rose from one Sam Kelher, doing business as Sammy's Ontario Tire and Wheel Exchange, of approximately four hundred and ninety-one (491) new rubber automobile and truck tires and of approximately six hundred thirty-eight (638) new rubber automobile and truck tubes which the defendant Benjamin Rose thereupon caused to be transported from the premises of said Sam Kelher.

(e) That on or about August 22, 1942, at Pasadena, California, defendant Benjamin Rose purchased approximately two hundred twelve (212) new rubber automobile [7] tires and approximately seven hundred ninety-eight (798) new rubber tubes from one Rueben Slavett and thereupon defendants Sam Weinstein and Louis Vitagliano assisted said defendant Benjamin Rose in the removal of said tires and tubes from the premises of said Rueben Slavett, on which occasion defendant Benjamin Rose directed the transfer man transporting said tires and tubes for him to describe them as "auto accessories" on his statement of services rendered.

(f) On or about September 9, 1942, at Los Angeles, California, defendant Mac R. Brown purchased and obtained possession of approximately thirty-eight (38) new rubber automobile tires from one Sam Parsner and said tires were thereupon transported away from the premises of said Sam Parsner in a truck obtained for said purpose by defendant Louis Vitagliano.

(g) That on or about September 17, 1942, at Los Angeles, California, defendant Benjamin Rose falsely represented to an Investigator of the Office of Price Administration that he had sold the new rubber automobile tires theretofore purchased from Mike Kreling to Golden Lubricants, Inc., a corporation.

(h) That on or about September 29, 1942, in the night-time, at Los Angeles, California, defendant Benjamin Rose caused a number of new rubber automobile tires to be moved from Wabash and Thornton Streets, Los [8] Angeles, California, to a place of storage near Bronson Street and Sunset Boulevard, Los Angeles, California, and caused a number of new rubber automobile tires to be moved on said date from said Wabash and Thornton Streets to a place of storage near 3300 West Washington Boulevard, Los Angeles, California, and directed the transfer man handling the transportation of said tires to describe said tires on his statement of services rendered as "auto accessories".

(i) That on or about October 1, 1942; at about midnight, at Los Angeles, California, defendant Benjamin Rose removed a number of new rubber automobile tires from a place of storage near 3300 West Washington Boulevard, Los Angeles, California, to a place or places unknown.

(j) That on or about September 24, 1942, at Los Angeles, California, the defendant Benjamin Rose called upon Leo Doyle and Walter Welman and offered to sell them approximately three hundred (300) new automobile rubber tires and approximately one thousand (1000) new rubber tire tubes.

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [9]

## COUNT TWO

And the Grand Jurors, inquiring as aforesaid, upon their oaths aforesaid, do hereby reallege and incorporate as if here set forth in full all of the allegations contained in paragraphs 1 to 12 of Count One of this Indictment and in paragraph 14 of Count One of this Indictment.

15. Beginning on or about December 12, 1941, and continuously thereafter up to and including the date of the return of this Indictment, the defendants in the County of Los Angeles, State of California, division and district aforesaid, did unlawfully, wilfully, knowingly, corruptly, feloniously



and fraudulently conspire together and with other persons whose names are to the Grand Jurors unknown to defraud the United States of America by impairing, defeating and obstructing the proper and lawful functions of an agency of the United States of America, to-wit: the Office of Price Administration in the protection and preservation of a vital material, to-wit: rubber, and more particularly, rubber automobile tires essential to the successful prosecution of the war and the maintenance of the national defense of the United States and the public safety by means of selling, trading, leasing, shipping and transferring new rubber automobile tires, casings, and tubes to consumers and other persons without rationing certificates, and attempting to sell, trade, lease, ship and transfer new rubber automobile tires, casings and tubes to consumers and other persons without rationing certificates, in violation [10] of the statutes, executive order, regulations, and directives hereinbefore referred to.

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

LEO V. SILVERSTEIN,

United States Attorney. [11]

Bail, \$7500—Brown

4000—Rose & Weinstein

2500—Taplin, Vitagliano & Rezniche

1000—Lieb

[Endorsed]: Filed Jan. 27, 1943. [12]



In the United States District Court, Southern District of California, Central Division

No. 15811

UNITED STATES OF AMERICA,  
Plaintiff,  
vs.

MAC R. BROWN, JOSEPH LIEB, BENJAMIN  
ROSE, PHIL REZNICHE, PHIL TAPLIN,  
LOUIS VITAGLIANO and SAM WEIN-  
STEIN,  
Defendants.

NOTICE OF MOTION FOR DEMAND FOR  
BILL OF PARTICULARS

To the Plaintiff Above Named and to Leo V. Silverstein, Esq., United States Attorney:

You, and Each of You, Will Please Take Notice, that the defendant, Benjamin Rose, by his counsel and for himself, will on March 1, 1943, at the hour of 10:00 o'clock A. M. or as soon thereafter as the matter can be heard in the courtroom of Honorable Leon R. Yankwich, in Courtroom No. 5, demand a bill of particulars from the plaintiff, in accordance with the Demand for Bill of Particulars filed and served herewith.

Said motion will be based upon all the records and files in the above entitled action, the Demand for Bill of Particulars served and filed herewith, and the Memorandum of Points and Authorities served and filed with the Demurrer.

Dated: February 16th, 1943.

Yours, etc.

BENJAMIN J. GOODMAN,

Attorney for Defendant, Ben-  
jamin Rose.

Office & P. O. Address, 810 Wm. Fox Building, Los  
Angeles, California, TR. 8101.

To: Leo V. Silverstein, Esq.,  
United States Attorney. [13]

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[Title of District Court and Cause.]

DEMAND FOR BILL OF PARTICULARS,  
BY DEFENDANT, BENJAMIN ROSE

Comes now the defendant, Benjamin Rose, by his counsel and for himself alone, moves the Honorable Court above named that the United States of America be required to furnish to said defendant, a Bill of Particulars informing him concerning the allegations of the Indictment in said cause, upon the following subjects, to wit:

COUNT ONE

1. What particular provisions of the regulations referred to in the Indictment, did the defendant conspire to violate?

2. The statute defining offenses against the United States did the defendant conspire to violate?

3. In *any* way does conspiring to violate any of

the provisions of any of the regulations referred to in the indictment constitute an offense? [14]

## COUNT TWO

1. What function of the government of the United States did the defendant conspire to defraud?

2. What means did the defendant conspire to use to overreach any government officer or agent?

3. What tricks, chicanery, deception or fraud did the defendant conspire to practice upon any government representative or government officer connected with the matter charged in the indictment?

4. In what way does the conspiracy to sell new tires and tubes, not the property of the United States, tend to defraud the United States, within the meaning of the U.S.C.A. Title 18, Section 80?

Said demand will be based upon the face of the Indictment and other pleadings, records and files in said cause, and upon the points and authorities heretofore served and filed with the demurrer to the Indictment.

Dated: February 16th, 1943.

BENJAMIN J. GOODMAN,

Attorney for Defendant, Benjamin Rose.

Office & P. O. Address, 810 Wm. Fox Building, 608  
S. Hill St., Los Angeles, California, TR. 8101.

To: Leo V. Silverstein, Esq.,

United States Attorney. [15]

Received copy of the within this 18th day of February, 1943.

LEO V. SILVERSTEIN,

U. S. Att'y.

Attorney for Plaintiff.

By R. MacKAY.

[Endorsed]: Filed Feb. 18, 1943. [16]

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[Title of District Court and Cause.]

NOTICE OF MOTION AND FOR DEMAND A  
BILL OF PARTICULARS

To the United States of America and Leo V. Silverstein, United States Attorney:

You will please take notice that on Monday, the 1st day of March, 1943, at 10 o'clock A.M. of said day, or as soon thereafter as counsel can be heard, at the Courtroom of Judge Leon R. Yankwich, No. 5, Federal Building, City of Los Angeles, County of Los Angeles, State of California, the above-named defendants will move the Court for a Bill of Particulars.

Said motion will be made upon this notice, the papers on file in this case, the demand for Bill of Particulars and the Memorandum of Points and Authorities on Demand for Bill of Particulars, and served herewith.



Dated: Los Angeles, California, February 15,  
1943.

BENJ. T. WEINSTEIN,  
Attorney for Defendants  
named. [17]

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[Title of District Court and Cause.]

DEMAND FOR BILL OF PARTICULARS BY  
DEFENDANTS MAC R. BROWN, PHIL  
TAPLIN, LOUIS VITAGLIANO AND  
SAM WEINSTEIN

Come now the defendants Mac R. Brown, Phil Taplin, Louis Vitagliano and Sam Weinstein by their counsel and for themselves alone move the Honorable Court above named that the United States of America be required to furnish to said defendants and to each of them a Bill of Particulars informing them concerning the allegations of the indictment in said cause upon the following subjects, to wit:

Count One

1. What particular provisions of the regulations referred to in the indictment did the defendants conspire to violate?

2. What statute defining offenses against the United States did the defendants conspire to violate?

3. In what way does conspiracy to violate any

of the provisions of any of the regulations referred to in the indictment constitute an offense? [18]

Count Two

1. What function of the government of the United States did the defendants conspire to defraud?

2. What means did the defendants conspire to use to overreach any government officer or agent?

3. What tricks, chicane, deception or fraud did the defendants conspire to practice upon any government representative or government officer connected with the matter charged in the indictment?

4. In what way does the conspiracy to sell new tires and tubes, not the property of the United States, tend to defraud the United States within the meaning of U.S.C.A. Title 18, Section 88?

Said demand will be based upon the face of the indictment and other pleadings, records and files in said cause and upon the points and authorities attached hereto.

Dated: February 15, 1943.

BENJ. T. WEINSTEIN,

Attorney for Defendants Mac R. Brown, Phil Tappin, Louis Vitagliano and Sam Weinstein.

Received copy of ..... 17th day of February, 1943.

LEO V. SILVERSTEIN,

U. S. Atty.

Attorney for Plaintiff

HKM

[Endorsed]: Filed Feb. 17, 1943. [19]

At a stated term, to-wit: February Term, A.D. 1943 of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Monday the 15th day of March in the year of our Lord one thousand nine hundred and forty three.

Present: The Honorable Leon R. Yankwich, District Judge.

[Title of Cause.]

No. 15,811-Crim.

This cause coming on for hearing on demurrers of defendants Mac R. Brown (et al) and hearing on demand of above defendants for a bill of particulars; \* \* \* It is ordered that demurrers be, and they are overruled, and motion for bill of particulars denied.

Attorney Benjamin Goodman, Esq., appearing for defendant Benjamin Rose, presents demurrer and motion for bill of particulars on behalf of said defendant and argues in support thereof; Attorney Calverley argues in reply. It is ordered that said demurrer be, and it is hereby, overruled and motion for bill of particulars is denied. [20]

At a stated term, to-wit: The February term, A.D. 1943 of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Tuesday, the 4th day of May in the year of our Lord one thousand nine hundred and forty three.

Present: The Honorable Ben Harrison, District Judge.

[Title of Cause.]

No. 15,811-Crim.

Defendants present.

On motion of Attorney Norcop, it is ordered that the indictment as to the defendant Phil Rezniche be, and it hereby is, dismissed, and his bond exonerated, and further ordered that trial proceed as to the other six defendants, and that a jury be impaneled;

\* \* \* \* \*

In the absence of the Jurors, counsel and Court discuss certain matters, and Attorney Goodman, in behalf of defendants, moves that the Court require the Government to elect which counts the Government will proceed to trial on, and argues in support of motion to elect.

Attorney Norcop argues in opposition to said motion to elect made on behalf of defendants.

The Court orders motion to elect denied as to all defendants. \* \* \* [21]



On motion of the defendants' counsel, the jury and alternate juror are excused by the Court and retire from the Courtroom, and in the absence of the jury and alternate juror, all others appearing as before, Attorney Sullivan moves to dismiss each of the two counts of the indictment, or that the Court instruct the jury to return a verdict of not guilty as to each defendant on each count.

The Court makes a statement and states that it will permit the Government's counsel to make a further opening statement to the jury, and orders said motions of defendants denied, and an exception allowed each defendant. [22]

\* \* \* \* \*

At a stated term, to-wit: The February term, A.D. 1943 of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Friday the 7th day of May in the year of our Lord one thousand nine hundred and forty-three.

Present: The Honorable Ben Harrison, District Judge.

[Title of Cause.]

No. 15-811—Crim.

\* \* \* The Court makes a statement and orders that the Government elect between the two counts of the indictment, which it will proceed on, and states that the Court is now of the opinion that this case

should proceed and be given to the jury as to all of the five defendants now on trial.

Attorney Noreop states that the Government elects to stand on count one of the indictment and that the trial proceed on that count only.

The Court orders that the trial will proceed as to count one as to the remaining five defendants, and that it is hereby ordered that count two of the indictment as to the remaining five defendants is dismissed. [23]

Attorney Goodman separately moves to strike certain testimony and evidence, on behalf of all defendants, and separately moves to strike certain testimony and evidence on behalf of the defendant Rose only, and states the grounds of each of said motions; and the Court orders each separate motion denied and an exception is noted for each defendant, as reflected by the court reporter's notes.

\* \* \* \* \*

Attorney Goodman states that the defendants have decided that they will not put on any evidence, and separately moves, on behalf of the defendant Rose, to strike certain testimony of certain witnesses, and separately moves that the Court instruct the jury to return a verdict of not guilty as to the defendant Rose.

The Court orders each of said separate motions denied, and an exception allowed.

Attorney Sullivan moves, on behalf of defendants Brown, Taplin and Weinstein, to strike certain testimony of certain witnesses, and separately moves that the Court instruct the jury to return

a verdict of not guilty as to each of the said three defendants.

The Court orders each of said motions on behalf of said three defendants denied, and exception is allowed each defendant.

Attorney Angelillo moves to strike, on behalf of defend- [24] ant Vitagliano, certain evidence, and moves that the Court instruct the jury to return a verdict of not guilty as to said defendant.

The Court orders each of said motions on behalf of defendant Vitagliano denied, and an exception allowed. [25]

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[Title of District Court and Cause.]

### VERDICTS

We the Jury in the above-entitled cause, find the defendants as follows:

Mac R. Brown, guilty as charged in count one of the indictment

Benjamin Rose, guilty as charged in count one of the indictment

Phil Taplin, guilty as charged in count one of the indictment

Louis Vitagliani, guilty as charged in count one of the indictment

and Sam Weinstein, guilty as charged in count one of the indictment.

Dated: Los Angeles, California, May 10, 1943.

HARRY B. McDOWELL,  
Foreman.

[Endorsed]: Filed May 10, 1943. [26]

[Title of District Court and Cause.]

### NOTICE OF APPEAL

Name and Address of Appellant:

Benjamin Rose,  
c/o United States Coast Guard,  
Wilmington, California

Name and Address of Attorney for Appellant:

Benjamin J. Goodman,  
608 S. Hill Street,  
Los Angeles, California.

Offenses: U. S. Code Title 18, Section 88.

Date of Judgment: May 24, 1943.

Brief Description of Judgments and Sentences:  
One year and one day in the penitentiary and Two  
Thousand (\$2,000.00) Dollars fine.

I, the above named Appellant, hereby appeal to  
the United States Circuit Court of Appeals for the  
Ninth Circuit from the judgments and sentences  
above mentioned on the [27] grounds set forth  
below.

Pursuant to Rule V, I hereby serve notice that I  
elect not to enter upon the service of the sentence  
pending appeal and that the judgments and sen-  
tences be stayed pending the appeal.

Dated, Los Angeles, California, May 25, 1943.

BENJAMIN ROSE

Appellant

BENJAMIN J. GOODMAN

Attorney for Appellant



Grounds of Appeal:

1. The Indictment is in violation of the Sixth Amendment to the Constitution of the United States, in failing to inform the accused of the nature and cause of the accusation;
2. The Indictment is in violation of the due process of law guaranteed by the Fifth Amendment to the Constitution of the United States;
3. The indictment fails to state a public offense;
4. The District Court erred in refusing a Bill of Particulars;
5. The District Court erred in over-ruling the demurrer to the Indictment, the indictment is vague, indefinite and uncertain;
6. The Appellant was denied due process of law guaranteed by the Fifth Amendment to the Constitution of the United States in the procedure of proceedings of the case; [28]
7. The Indictment also charges two offenses of the same character;
8. The verdicts are contrary to the law and evidence; the evidence shows the appellant to be innocent of the crime of which he was convicted;
9. The District Court erred in the admission of evidence illegally seized, in violation of the Fourth and Fifth Amendments to the Constitution of the United States;
10. The District Court erred in failing to direct the verdict for Appellant;

11. The District Court erred in failing to arrest the judgment.

BENJAMIN ROSE

Appellant

BENJAMIN J. GOODMAN

Attorney for Appellant

Received copy of the within this 25th day of May, 1943.

LEO V. SILVERSTEIN,

U. S. Atty.

Attorney for Plaintiff

HM

[Endorsed]: Filed May 25, 1943. [29]

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

Name and Address of Appellant:

Louis Vitagliano  
228 Raymond Ave.,  
Glendale, California

Name and Address of Attorney for Appellant:

Paul Angelillo,  
208 South Pasadena,  
Los Angeles, Calif.

Offense: U. S. Code

Title 18

Section 88

Date of Judgment: May 24, 1943.

Brief Description of Judgments and Sentences:

Six months in the Los Angeles County Jail and One Thousand (\$1,000) Dollars fine.

I, the above named Appellant, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgments and sentences above mentioned on the grounds set forth below.

Pursuant to Rule V, I hereby serve notice that I elect [30] not to enter upon the service of the sentence, pending appeal and that the judgments and sentences be stayed pending the appeal.

Dated, Los Angeles, California, May 25, 1943.

**LOUIS VITAGLIANO**

Appellant

**PAUL ANGELILLO**

Attorney for Appellant

**Grounds of Appeal:**

1. The Indictment is in violation of the Sixth Amendment to the Constitution of the United States, in failing to inform the accused of the nature and cause of the accusation;
2. The Indictment is in violation of the due process of law guaranteed by the Fifth Amendment to the Constitution of the United States;
3. The Indictment fails to state a public offense;
4. The District Court erred in refusing a Bill of Particulars;
5. The District Court erred in over-ruling the demurrer to the Indictment, the Indictment is vague, indefinite and uncertain;

6. The Appellant was denied due process of law guaranteed by the Fifth Amendment to the Constitution of the United States in the procedure and proceedings of the case;

7. The Indictment also charges two offenses of the same [31] character;

8. The verdicts are contrary to the law and evidence; the evidence shows the appellant to be innocent of the crime of which he was convicted;

9. The District Court erred in the admission of evidence illegally seized in violation of the *Court* and Fifth Amendments to the Constitution of the United States;

10. The District Court erred in failing to direct the verdict for Appellant;

11. The District Court erred in failing to arrest the judgment.

LOUIS VITAGLIANO

Appellant

PAUL ANGELILLO

Attorney for Appellant

Rec'd copy of the within this 25th day of May, 1943.

LEO V. SILVERSTEIN

United States Attorney

HM

[Endorsed]: Filed May 25, 1943. [32]



[Title of District Court and Cause.]

STIPULATION

It Is Hereby Stipulated and Agreed that the appeals of Benjamin Rose and Louis Vitagliano from the judgment of the Honorable Benjamin Harrison, entered May 24, 1943, may be tried together, and that one Bill of Exceptions be filed for both of said appellants and one number given the case.

LEO V. SILVERSTEIN

United States District

Attorney

BENJAMIN J. GOODMAN

Attorney for Appellant :

Benjamin Rose

.....

Attorney for Appellant

Louis Vitagliano

ORDER

Good cause appearing for the foregoing stipulation, it is ordered that the appeals of Benjamin Rose and Louis Vitagliano, from the judgment entered on May 24, 1943 may be tried together and that one Bill of Exceptions be filed for both said Appellants, and one number be given this case.

Dated this 25 day of May, 1943.

HARRISON

Judge—District Court [33]

On or about the 3rd day of May, 1943, the date set for trial of this cause, defendant Rose was brought

into court in the presence of the jury panel by two Coast Guardsmen. He was using crutches at the time. Mr. Goodman, attorney for Mr. Rose, then asked Mr. Norcop to step into Judge Harrison's chambers with him. Mr. Norcop and Mr. Goodman entered the Judge's chambers. Mr. Goodman then stated to the Judge as follows: That on May 1, 1943, Mr. Rose had sent a telegram to Mr. Goodman advising him that he had been injured in an accident and that he was physically unfit and unable to proceed with the trial and had instructed Mr. Goodman to request a continuance of the case, that Mr. Goodman, by telephone, communicated with Assistant United States Attorney Norcop on the same day and advised Mr. Norcop of the contents of said telegram, that Mr. Norcop had stated to Mr. Goodman that he would oppose a continuance for the reason that the United States Attorney's office was ready to proceed with the trial and had subpoenaed witnesses who were coming from outside California, but that he would communicate with the Coast Guard base and ascertain the extent of the injuries suffered by Mr. Rose and would later advise Mr. Goodman; 30 minutes later Mr. Norcop called Mr. Goodman and stated that he had contacted the doctors at the Coast Guard base, that it appeared to him that Mr. Rose had not been seriously injured and that he was feigning or exaggerating the injury and that he would communicate the data to Judge Harrison and insist upon the case going to trial on May 3, 1943. Mr. Goodman then stated to Judge Harrison that Mr. Rose had been brought to the courtroom by

Naval Policemen in the presence of the jury panel and that they were constantly with him and that he could not converse with his client in the presence of Naval Policemen and would have [34] no opportunity of private consultation with his client if the Naval Policemen continued to keep Mr. Rose in their custody. Mr. Norcop then stated to Judge Harrison that he had telephoned the Coast Guard base the preceding Saturday after Mr. Goodman had informed him that the defendant, Mr. Rose, was hospitalized and had inquired concerning the extent of the injury to Mr. Rose, that he had spoken to two of the doctors at the Coast Guard infirmary where Mr. Rose was a patient and that they had informed him that in their opinion Mr. Rose was in reality feigning or greatly exaggerating, that his attendance at the trial would not endanger his health, that Mr. Norcop had requested the doctor who was the officer in command of the infirmary in which the defendant, Mr. Rose, was a patient either to discharge Mr. Rose as a patient to enable him to attend court or to arrange for Mr. Rose's transportation to and from court during the trial, that the commanding officer of the infirmary had stated that he would not discharge Mr. Rose as a patient, but would have him transported to court in the company of competent medical corp attendants from the infirmary so as to enable Mr. Rose to attend the trial and to have competent hospital attention if needed. Judge Harrison then stated that he saw no reason why Coast Guardsmen would be required in immediate attendance upon Mr. Rose and that Mr. Rose



should have the opportunity to consult with his attorney privately. Judge Harrison then stated that the Coast Guardsmen should release Mr. Rose and he called the Coast Guardsmen into chambers and so directed them. Mr. Goodman then stated that in view of Mr. Rose's leg injury the case should be continued until he recovered because according to what Mr. Rose told Mr. Goodman the doctor advised him to stay off his leg, that Mr. Norcop stated that he would oppose any [34-a] continuance and Judge Harrison stated that Mr. Rose was present and didn't appear to be so incapacitated that he could not proceed to trial, and said that the trial should proceed. The proceedings in chambers then concluded, the parties returned to the courtroom, the case was called for trial in open court, whereupon a jury of twelve and one alternate was regularly empanelled and duly sworn to try the case. Said jury was drawn from the panel present in court when Mr. Rose was brought into court by the Coast Guardsmen.

On May 4, 1943, at the morning recess Mr. Goodman and Mr. Norcop stepped into the chambers of Judge Harrison. At that time Mr. Goodman stated to Judge Harrison as follows: that he had had a doctor from the United States Health Service examine Mr. Rose's leg at 9 a.m. and that the doctor had informed Mr. Goodman that Mr. Rose's leg was swollen and that he should go back to the United States Coast Guard base and stay off his leg for several days and that a doctor was available for a



statement as he was outside of the courtroom. Judge Harrison ordered the doctor into chambers. The doctor and two other doctors from the United States Coast Guard infirmary entered the chambers and in the presence of Judge Harrison, Mr. Norcop and Mr. Goodman, defendant Rose was examined by the doctors. All doctors stated that Mr. Rose's leg was injured and swollen and that he should keep the weight of his body off the leg. Some one present, other than Mr. Rose and his counsel, suggested that Mr. Rose's leg be propped up. Judge Harrison then suggested that a chair could be arranged. The above mentioned parties then left the chambers and returned to the courtroom. A chair was set up in the courtroom in a position so as to enable Mr. Rose to have his leg placed thereon and kept level and in [34-b] which position his leg was kept throughout the trial, except when the court was in recess.

[35]

Mr. Norcop: At this time, if the court please, we move in behalf of the Government to dismiss the indictment against the defendant Phil Rezniche, there not being sufficient evidence to connect him with this enterprise, and that his bond be exonerated and he is free to go.

The Court: That will be the order.

(In absence of the jury:)

Mr. Goodman: First, your Honor, I would like counsel for the Government to stipulate that when any objection is made on behalf of any defendant, that it may be deemed to be made on behalf of all

the defendants, without counsel having to join in on each objection, unless there is an exception made at the time of the objection by one of counsel. They may not want to join it. That would save a lot of time in the record and a lot of objections from all counsel on one question.

The Court: The court will consider any objection made by any one of the counsel for defendants as an objection by all. . . . An exception taken by one will be deemed taken by all.

Mr. Goodman: In reference to my motion, your Honor, at this time I move the court to compel the Government counsel to elect upon which count of the indictment they will rely; and I base my motion upon the following grounds: [36]

The first count alleges a conspiracy to commit offenses against the United States Government and the second one alleges a conspiracy to defraud the United States Government in the lawful functions of several of its agencies. Both counts allege the same conspiracy. Each count contains the identical combination of conspiracies. The conspiracies charged begin at the same time and end at the same time. The conspiracies consist of the same combination and charge the same acts; in fact, the second count incorporates by reference some of the overt acts from the first count.

There cannot be two convictions in this case on both counts, and both counts charge the same conspiracy to commit more than one offense, and the fact that they may have committed a dozen offenses

would not change the situation any and the fact that they had violated a dozen statutes would not make any difference. It is the conspiracy which is the gravamen of the action and which is the offense being punished. (Citing *Braverman v. United States*) (Volume 87, No. 2, page 83, L. Ed. Advance Opinions)

(Argument follows.)

Mr. Norcop: In answer to counsel's argument in that respect, if the Court please, in that case, as the decision holds, the United States stipulated at the trial, the Government stipulated at the trial, that there was but one agreement, and counsel is correct in his recitation of the decision, but in our case here we have two separate and distinct offenses. [37]

The Court: Gentlemen, at this stage of the game I am going to deny the motion, and study this case further.

Mr. Shippee: May the record show that all the defendants join in this motion?

The Court: Yes, the record will show that all the defendants join, and an exception will be noted.

(At this point the jurors were called back.)

(Mr. Norcop here makes opening statement to the jury, as follows:)

Mr. Norcop: If the court please, and gentlemen, at the outset it is the estimate of the Government that it will take us about six or seven working days to present the testimony of the witnesses, of course, subject to the rulings of the court as we go along.



You have already understood that this is an indictment for two separate conspiracies, which the court has outlined to you. The first count alleges a conspiracy on the part of these six defendants to violate the tire rationing regulation, by attempting to conspire to sell to consumers, that is, the ultimate users, tires, without certificates obtained from the the tire rationing board.

The second count is a different one entirely, but is a conspiracy alleged against these same six men to obstruct and defeat the tire rationing program. There are what we call overt acts alleged in each of these counts; that is, actions that the court read off to you, that occurred on the date that he mentioned. The crime of conspiracy I won't read [38] to you, because it has already been outlined to you by the court in his opening statements, and the reading of the indictment.

The facts as they will be developed here commenced in the month of May of last year, 1942, the first transaction being a sale by the first witness who will appear here in the case, Mr. Novisoff to the defendant Phil Taplin of his entire stock of new tires and tubes, and the delivery to a place on a Sunday morning early. The defendant Weinstein was there with Mr. Taplin, to accept delivery, and the stock of tires and tubes were loaded into two rented vans, rented from the National-U-Drive Truck Service. Those vans, loaded and locked, proceeded to 12th and Sanford Streets, which was a gasoline station owned by the defendant Louis Vitagliano. They were there seen by witnesses, who



will appear, and when one of them, a police officer, questioned Mr. Vitagliano as to who owned these tires, he told him Mr. Taplin. Mr. Taplin was called over, and he exhibited to the inquiring officer a bill of sale received for them.

Then the tires moved, a day or so afterwards, on trucks to a point near 4th and Alameda, across the street from the Bekins Van & Storage warehouse, where, the testimony will show, two of the men, Taplin, and one of the others, went over across the street to Bekins Van & Storage, and asked if they could store these tires in there. They were told by a man they approached there that they could, except [39] they would be "frozen." The trucks stayed across the street unattended the rest of the day. Late that evening they were removed to another location close to 12th and Stanford, at which point they remained overnight, or perhaps a couple of nights, and they were taken, by the persons I have mentioned, the trucks being rented driverless—the person renting the trucks driving them himself—and they drove over to 3200 City Terrace. That was near the Evergreen Cemetery. There they were stored in a building that might have been a tire shop in the back of a gasoline station. They remained there from the end of May until the following September, a period of about four months, when they were moved from there, and were removed by a separate set of trucks, rented by the defendant Benjamin Rose from a trucking concern out in Hollywood.

He directed the truck drivers where to proceed—not the address, but to a street intersection, and there he met them, and the trucks separated. Phil Taplin was there, and Rose, and the other defendants, and they loaded the tires in one of the trucks, and proceeded to 3300 West Washington Street, which was the Arlington Van & Storage Co. building. There they made arrangements to store the tires, not on Washington, but in an intersecting warehouse in what they call “Set-off” space, taking the tires off of the trucks and putting them in the warehouse.

The second truck was taken by the man who owned the [40] truck out on Hollywood and Sunset, near Bronson, Rose having previously rented a little garage, one of these garages with a building in the back, on a one-month’s basis, for a given sum of money.

The tires were all unloaded there from the second truck. No record has been shown since of the disposition of those tires, except a witness will be produced here who will testify as to some of the goings on and happenings with respect to those tires, and the defendant Rose, at that place, at Sunset and Bronson.

The testimony will show that all trace was lost of the tires stored at 3300 Washington, on this side street. We have no record as to where they went, or what happened to them thereafter. You might call that Chapter A.

The next transaction is in the month of July, about the 21st of July, when Ben Rose bought the

entire stock of one Mike Kreling, here in Los Angeles, about 48 new tires and 130 new tubes, getting an invoice for them. We can't tell you where they went, but when Mr. Rose was interviewed by one of the witnesses who will testify, he stated that these tires had been sold to the Golden State Lubricants, a concern that had a gasoline station in Los Angeles, and particularly that one Joe Munn had signed for them for the Golden State Lubricants. We will bring in testimony to show that was an entirely fictitious sale; that no such sale took place, and the company was out of business at [41] that location, and that there was no Joe Munn ever employed by the company.

On August 1, 1942, Mr. Rose rented a storeroom from the Bank of America at 613 North Virgil Street, property that has been on one side a gas pump or station, and a little room in back, not visible from the front of the street, not any bigger than from the witness chair to the box here.

The next day he got the same person from Hollywood, who had rented him the two trucks, to go out to Ontario, on a Sunday, where he had purchased the entire stock of tires and new tubes of one Mr. Sam Kelher. Those two trucks loaded with tubes and tires, or vans, came into this location at 613 North Virgil, and the tires were unloaded, and placed in that place, which had not been a tire warehouse or dispensary.

Thereafter, about 10 days after that, the same van man was employed by Mr. Rose to go to Pasadena, where a van load of new tires, and new tubes, were



purchased from a man by the name of Reuben Slovet, and a bill of sale given, and that van of tires was likewise driven to 613 North Virgil.

The testimony will show that some of the witnesses around the place at that time noticed two previous truckloads had disappeared; they were practically all gone before the truckload was placed in there.

I neglected to say in regard to the first purchase, which took place in May—it comes in properly now—about [42] that time, or shortly after, they were moved from over on the east side to the two locations I told you about. Mr. Taplin told one of the witnesses that he had made a sale of these tires to the Golden State Lubricants, to another defendant in this case, Mr. Mac R. Brown, and that was the invoice furnished to our witness at that time.

Along the way there was another transaction, where a Mr. Parsner, in business here down about Washington, off of Main Street, sold his new tires and tubes to the defendant, Mr. Mac R. Brown. In that connection the testimony will show that diligent inquiry was made by both Mr. and Mrs. Parsner, as to who owned the tires, and whether Mr. Brown was legitimately in the filling station business, which he said he was, and where he was located, and they will testify that it developed that he was a lessee, or under contract, with the Signal Oil Company, and had a station at 2428 Sunset Boulevard. So they made the sale of their tires to him. Later, when Mr. Brown was interrogated about the transaction, and what disposition, if any, he had made of these



tires, he said he had sold them, but did not have at that time an invoice, but could get one. On the following day he gave one to one of our witnesses, who said that these same Parsner tires had been sold to the "T & M Tire Service" which had been in business at 1610 South Main Street. The testimony will develop that this place of business had been out of business for months; that there was no such business. [43] That is the vanishing point of that group of tires.

The testimony will show that on the 25th of September, Sam Weinstein, after considerable negotiation with a man by the name of Bill Soukesian, on North Broadway, just a few blocks from here, purchased their entire stock of new tires and tubes, and they were delivered by a Hertz-U-Drive truck which truck had been rented by Mac Brown and others who were with him, including, the evidence will show, Louis Vitagliano, to transport these tires from North Broadway.

Mr. Brown, and the others with him, took Mr. Soukesian to his truck over to his place of business on Sunset Boulevard, previously mentioned, to 2824 Sunest Boulevard. Only one truckload was taken the first day, and the next day, September 26, two trucks were taken.

Meanwhile, Soukesian wanted to satisfy himself that there was such a place, and he went there and found that there was such a station under the name Mr. Brown had given him, and then, as I say, already two of the truckloads had been delivered.

In the Meantime Mr. Brown told Soukesian that

he wanted to take six tires and one new tube immediately in his passenger car, because he had certificates for them, and he wanted to make immediate delivery. Among other things, Brown and Weinstein told Soukesian that the reason, when he asked them specifically how they could handle such a large quantity of new automobile tires and tubes, when he [44] did not have the necessary certificates of certificate holders, Brown told him he had a large string of defense plants, and he had stocked up certificates, and they wouldn't last him 30 days, and he could dispose of them in that manner through defense workers.

In the matter had in the transaction at Ontario, Mr. Weinstein was the man who made the arrangement between the seller and Rose, the purported purchaser. The same thing was true in Pasadena, Weinstein was the one who brought the seller and Rose together.

In the last transaction I am going to mention to you now, about the end of August, over in front of or to the side of the Knights of Pythias Building, at 16th and Venice they call it now—we used to call it "16th"—just west of Figueroa Street is the Knights of Pythias Building, and the testimony will show that on the 27th, or thereabouts, of August of last year and before, a long time previous to that, Mr. Joseph Lieb, whose name has not been mentioned up to now, one of the defendants, had a cigar factory on the ground floor in the front room of that building. The testimony will show that he had been observed rolling tires and tubes out of his place and down the street for delivery into a truck

about two or three weeks before the date I just mentioned; that on the date I just mentioned, Ben Rose and Ben Rose's brother, Dave, who is not a defendant here, and Lieb, had cars at the front of the lot alongside of this [45] building and Lieb was seen, from persons in the building, participating in a transaction with reference to tubes or tires and was seen to pass money from himself to one of the other persons mentioned. Thereafter the party went to the rear of the lot and the second deal took place with respect to the same tires or tubes, I should say, and a witness in the building counted them, the number of rubber articles that were passed from one car to the other in the rear of the lot, all of this taking a period of time, perhaps two or three hours; and after that, Mr. Lieb went to this witness and asked if she had seen the transaction and she said that she had; and he asked her, further, if she had reported it and she said she had not.

I have not mentioned so specifically here in the recitation of the facts Louis Vitagliano, but, as the testimony develops, I think it will show to you that he is not so much on the front, with his name being used as a salesman or a buyer, but at the scene when all the deliveries were made through this period of conspiracy, as we claim, from early in May until the end of October or thereabouts.

And we will try to be expeditious in the presentation of these facts in this case, but will ask you to bear with us as we go along so they can be made clear to you. I haven't by any means given you



all of the details that will be revealed to you, and after that testimony has been completed it will be our claim that, very clearly, beyond a [46] reasonable doubt, we have established a conspiracy under the first count to commit an offense against the United States, that is, violate the revised tire rationing regulation by conspiring and arranging to to make sales to consumers. If we had sales to actual consumers it would not be a conspiracy; we would have the actual selling. Our case is a conspiracy case.

On the second count we claim that these men—and the evidence will be largely the same, but a different agreement—we claim was in the second conspiracy, and that was to conspire to defraud the United States by obstructing, impairing, and defeating its legitimate function of tire rationing through its regulations and through the rationing boards. And if to your satisfaction we present all the evidence which will be on that, we will ask for your verdict.

(Whereupon the jury were excused from the court room and the following proceedings were had in their absence:)

(Mr. Sullivan states Defendants' desire to make a motion.)

Mr. Norcop: Before the motions are made, I should inform the court, I think properly at this time, that the Federal Register Act, which was passed in 1935, provides, in Section 7 thereof, the Act commencing at 49 Statutes 52 as follows: "The contents of the Federal Register shall be judicially



noticed and without prejudice to any other mode of citation may be cited by volume and page number." And [47] therefore, the documents that they may be wanting to discuss in their motions are properly, under that authority, taken judicial notice of it they have actually been published in the Register.

Mr. Sullivan: The motion which we have in mind is, and we move your Honor to do so, to dismiss both count 1 and count 2 of the indictment, or, in the alternative, to instruct the jury to render a verdict of not guilty or acquittal based upon the opening statement of Government counsel. The opening statement of Government counsel as to what they intend to and are going to prove to show a conspiracy under either count 1 or count 2 are all matters and things which, neither in and of themselves, nor collectively, constituting conspiracy.

The Court: I am going to permit the counsel for the Government to add to their opening statement a statement in substance and effect that they expect to prove all of the allegations of the indictment, which will correct any discrepancy in that respect.

Mr. Sullivan: May we have at this point, then, your Honor, an exception to the Court's allowing the Government to reopen their statement and denying our motion?

The Court: You may have an exception.

Mr. Goodman: May the record show that all counsel join in this motion?

The Court: It is understood that the motion is made [48] on behalf of all the defendants and exception noted on behalf of all.

That is going to be the court's ruling. I noticed in the opening statement that the Government only stated a few facts; and I am going to give the Government an opportunity if they so desire, to make a further opening statement and whether or not they expect to prove all the allegations of the indictment.

Mr. Sullivan: Your Honor will notice that all of the overt acts that are alleged in the indictment as overt acts are ones dealing with transportation. Counsel for the Government in his opening statement to the jury has stated that at various times rubber tires were transported from one place to another, or were seen in the act of being transported and after these individual transportation acts, he states, to use his words, "that the tires from then on vanished; that they were no more to be found by the Office of Price Administration. The Office of Price Administration regulations, or the rationing regulations, provide on the transfer by a retailer, which he stated in this case happened to be individuals involved in filling stations: "Any retailer may, without certificate, transfer any new tire or tube to any retailer, distributor, wholesaler or manufacturer." It is specifically provided in the Act.

Then, by a distributor: "That any distributor may, without certificate, transfer any new tire or tube to any [49] wholesaler or manufacturer." The same with reference to a wholesaler: "may transfer to any other wholesaler or manufacturer without certificate."

By a wholesaler: "Any wholesaler may, without certificate, transfer any new tire or tube to any manufacturer."

Then, records: "Any person making a transfer pursuant to paragraphs 1, 2 and 3"—which I have just read——

The Court: That is, in effect, that the transfers have to be made to a consumer, isn't it?

Mr. Sullivan: Well, that is right.

Mr. Goodman: In order to make out a case for the Government they have to prove sales to consumers.

The Court: They are not charged with a substantive offense. They are charged with conspiracy, that that was the intent and object of the conspiracy, and whether they actually did it or not would be material.

Mr. Sullivan: Counsel for the Government has stated that there are no substantive offenses that they are going to nor can they prove.

The Court: Under conspiracy they do not have to prove a substantive offense. If they can prove that there was a combination here, the conspiracy was for that purpose, the crime was complete whether they have sold any to a user or not, an ultimate user.

Mr. Sullivan: That is correct. I think that probably counsel rather confused you with what we had in [50] mind. It is not that we know, and the Government knows probably whether or not we do, that there are no substantive acts of selling to a consumer, and they can indict on that.



The Court: I do not know what they can prove.

Mr. Sullivan: That agreement that they contend, and which it is our contention that they did not express to the jury, in this sense: If they had told the jury in the opening statement that tires were, on such and such a date, transported to such and such a place and an ad was run in the newspaper to consumers to come and buy their tires there, and we will make a deal to you to avoid having a certificate, that would have been an indication of what was going to go on. But here, the bald statement of counsel for the Government to the jury is simply that they can prove the acts of transportation and that the tires vanished from their sight by reason of this transportation. Now, whether or not, even if you take it as a whole, your Honor, if that is a sufficient indication of an agreement to conspire to violate the laws of the United States——

The Court: May I ask, Mr. Norecop, is it your understanding and your contention that you are going to offer evidence that would tend to establish the fact that these people were handling tires for the purpose of placing them in the hands of the users?

Mr. Norecop: Yes, your Honor.

The Court: And you are not in conflict with the de- [51] fendants in so far as the provisions of the Act is concerned in that regard?

Mr. Norecop: Oh, no. No. If there was just an agreement to transfer from one dealer to another and that ended the entire matter, we would not be



in court; and we do not end there in our allegations in the indictment.

The Court: I know, but you did in your opening statement.

Mr. Norcop: Then, if I did, I will supplement it and I will say at this time, if the Court please, we are not always compelled to disclose every detail of our testimony in the opening statement.

The Court: You do not have to make one, so far as that is concerned; and if you make one, you can get up and state in substance that you expected to prove all of the allegations of the indictment and you have made a completed statement.

Mr. Norcop: I should have made it in that form, but I do want to say this to the Court so that the Court, out of the presence of the jury, will have a little more idea of what is coming throughout the case.

The Court: I just asked you the question: It is your intention to introduce evidence that will tend to show that the conspiracy here was to ultimately get these tires into the hands of users?

Mr. Norcop: Yes. [25]

The Court: Without complying with the regulations?

Mr. Norcop: Yes, your Honor; and we will have a number of instances of it.

Mr. Sullivan: If those matters and things were incorporated in the statement to the jury, then our motion would obviously be out of order.

The Court: I am glad to have it, because you are in accord, as I understand it, that the agreement

that it is incumbent upon the part of the Government to prove is that these people, by concert of action, intended that the tires would ultimately reach the user.

Mr. Sullivan: Would get into the hands of the consumers. Yes, your Honor; we are in agreement along that line. In so far as our motion is concerned, as I told your Honor, it was made for that purpose and also for the purpose of keeping the Government confined to the proof of the corpus delicti before it starts to connect these defendants up.

The Court: Of course, you realize that a conspiracy indictment is very broad and the Court can't tell a great deal about what things may tend to prove until we get down toward the end of the Government's case.

Mr. Sullivan: That is quite true, your Honor, but, at the same time, because of the nature of the indictment, you see, we were not—while we did make a motion for a bill of particulars, we were not furnished one, that is, the Court denied us the right to have a bill of particulars [53] and because of that we are left somewhat up in the air as to just where we stand with reference to what the Government is driving at, because in all of its overt acts, strangely, they all go to the transportation of tires.

The Court: Of course, the overt acts do not necessarily have to allege an offense.

Mr. Sullivan: No; that is quite true.

The Court: An overt act may on its face appear

absolutely innocent and yet be an act in furtherance of a conspiracy.

Mr. Sullivan: That is quite true, but outside of just the use of the words "still in contravention of the United States statutes" and that kind of a case, there is nothing in the indictment to even hint at what part of the great bulk of legislation concerning the office of the Price Administration these defendants are on trial for violating; and that is the purpose of our motion, to get this thing cleared up so that your Honor understands us and we understand counsel for the Government and counsel for the Government understands where we stand in the picture.

The Court: So far there does not seem to be much of a disagreement.

Mr. Sullivan: If our motion has accomplished that and to indicate to your Honor the position of the defendants——

The Court: While not any too familiar with the regulation, it is my understanding that the charge involves the [54] transfer of tires to a user.

Mr. Goodman: Your Honor, may I supplement Mr. Sullivan's statement with this observation? Your Honor might be interested in it. A similar case was tried in this district before another Court, a motion was made requiring the Government to elect on which count to stand, the same as the Braverman case, at the commencement of the trial, and the trial Court ultimately ruled upon it, and at the conclusion of the Government's case required the Government to elect at that time, which the



Government did. In that case the Government elected to stand on count 2, which was a fraud count, the same as ours. The original count, count 1, was dismissed for the reason that, prior to March 27, 1942, which was the date the Second War Powers Act was enacted, we had no penal provisions in our statute punishing the violation of any of these rules, regulations and directives. So that in that case, under count 1 there had been no offenses committed against the United States Government.

The Court: The first overt act here——

Mr. Goodman: Yes, I am making that observation. We do not have that in our case. In other words, the Second War Powers Act went into effect on March 2, 1942, and there were no penal provisions in full force and effect during the time the overt acts were committed, but when they relied on the second count then objection was made to proceeding on that count, because it did not state facts sufficient to [55] constitute a public offense. Counsel for the defendants relies upon the case of *Hammerschmidt v. United States*, reported in 265 U. S. 182, decided May 26, 1924. Judge Hollzer, of the trial court, ultimately had ruled upon that motion, and determined that the second count of the indictment was insufficient because it failed to allege facts showing how, when and where functions of Government were overreached by trickery, dishonesty, or any other device.

The Court: Are you making the argument that



the Government can't fall back on count 1 instead of count 2?

Mr. Goodman: I am coming to this point. After that was ruled on, and the second count ultimately dismissed, Government's counsel in this case dismissed the first indictment against the defendants, and had a new indictment brought in, in which they attempted to rectify the deficiency in count 2, which they ran into in this previous case. That rectification is the addition of the language in count 2, commencing with line 11, on page 6 of the indictment, and ending with the word "certificates" on line 19. That portion was added to the second count as distinguished from as it read on the return of the first indictment.

The Court: May I ask, was this question raised before Judge Yankwich?

Mr. Goodman: Yes.

The Court: On the demurrer to the indictment?

Mr. Goodman: Yes. [56]

The Court: He overruled it?

Mr. Goodman: That's right.

The Court: That is the law of the case, so far as we are concerned here.

Mr. Goodman: The only purpose in my observation was to bring home to the Court the fact that so far as the defendants' position is concerned now, we stood on the position that count 2 of the indictment still fails to state facts sufficient to constitute a public offense.

The Court: You have your record protected on the demurrer. I might state, on the question of

election, as I have advised counsel informally, if the Government does not prove more than one agreement, then at the end of the Government's case the Court will require an election. What do you want to do about your opening statement?

Mr. Norcop: I would like to supplement it, your Honor; amend it by making a few brief additions.

The Court: Very well. Any objection?

Mr. Goodman: May I protect the record: To which the defendants object on the ground that there is no right on the part of counsel now to amend his opening statement, and that it is not within the discretion of the Court that he should be allowed at this time to amend his statement to the jury.

The Court: Counsel, we don't try criminal cases on technicalities any more. We are going to try this case on its merits. Objection overruled and an exception noted. [57]

(Jury present.)

The Court: Mr. Norcop's application for an opportunity to supplement his opening statement is granted.

(Mr. Norcop adds to his opening statement, as follows:)

Mr. Norcop: Just a few words further, if the Court please, which I omitted before noon, this morning.

We intend to prove, gentlemen, each and every allegation of every part of this indictment, which was gone into fully this morning by the court, and

which will be called again to your attention before the case is submitted to you, including specifically, we will prove that there was an agreement between these six defendants to have new tires reach the hands of ultimate consumers, in violation of the revised tire rationing regulations, and in that connection, specifically, we will bring on a witness who will testify that the defendant Rose made him a specific offer of a certain number of tires, at a certain date, at a certain price.

We will bring in another witness who will testify that he purchased from the defendant Rose, pursuant to this conspiracy, at another place, another time, a large batch of new inner tubes, in violation of the regulations, because no rationing certificates were had by the purchasers.

We will prove solicitations by one or more of the defendants to do the same thing. We will prove, in addition, that on one occasion the defendant Rose stated to two different witnesses, who will appear here, that the [58] price of those tubes, to be bought without a rationing certificate was an average price of \$12.50 each for a new tube; and we will show that Mr. Rose frequently went to that warehouse I referred to, behind Randall's insurance office on Sunset, that he had rented, and in his personal automobile took away, a few at a time, new tires and new tubes from that place. One witness looked in on one occasion, when the door was open, and saw how many of the rest were remaining. The testi-



mony will show that they were practically all gone on that occasion, and this all occurred within a very short period of time.

That is the only additional statement I desire to make, if the court please. [59]

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### HENRY NOVISOFF

called as a witness by and on behalf of the Government, having been first duly sworn, testified as follows:

My name is Henry Novisoff.

Mr. Norcop: Before I interrogate Mr. Novisoff, under the authority of the Federal Register Act, 1940 Statutes, 500, I now ask to have marked for identification 11 booklets that are the publications in the Federal Register, of the matters mentioned in the first 12 counts of the indictment.

The Court: The first 12 paragraphs?

Mr. Norcop: The first 12 paragraphs.

The Court: Is there any objection why they can't be admitted in evidence, and have it over with?

Mr. Goodman: That is agreeable.

The Court: Any objection, gentlemen?

Mr. Goodman: I think it is a matter which the court will take judicial notice of.

The Court: They may want to refer to them.

Mr. Goodman: That is all right.



(Testimony of Henry Novisoff.)

Direct Examination

My business in May, 1942, was automobile tires; retreading, new tires. I was in business at 1161 South Main. I had been in business there 16 years under the name of Perfect-Made Tire Company.

I know the defendant Phil Taplin. I have had an acquaintance with him about six years. I had a conversation [60] with him in May of last year. I telephoned him. Somebody told me he was in the market for retreading molds, of which we had two we wasn't using, so I called him up and said "I got two retreading molds"——

Mr. Goodman: I object to the introduction of any evidence of conversations between this witness and Mr. Taplin, unless the corpus delicti is proved, or unless the defendant Rose is connected up with this alleged conversation, unless the testimony goes in with a reservation to later move to strike out the testimony unless it is connected up with a conspiracy.

The Court: Let us have an understanding now, gentlemen, and it will save a lot of strain on your voice, and a lot of overruling of objections. May it be stipulated that the evidence introduced will be subject to a motion to strike unless it is connected, and that will apply to each defendant, and will be received under that understanding? [60-a]

Mr. Norcop: Yes.

Mr. Goodman: We accept the stipulation of Government counsel.

(Testimony of Henry Novisoff.)

(By the witness):

So I called him up and asked him if he was in the market for two retreading molds, and he said, "At the present time I am not, but I am in the market for new tires and new tubes." I said, "I don't think I can sell you new tires and new tubes." He said, "You can." So the next day, or two days later, I don't remember the day exactly, he came and showed me the rationing regulation where a retail dealer can sell to another retail dealer without a certificate. I wasn't satisfied with that. I called D'Orr's secretary, whose name is Mr. Johnson, and asked him if they could be sold to another dealer, tires and tubes, and he said, "If he has a resale number and he is a legitimate tire dealer you absolutely can sell them, but to play safe," he said, "he should have a letter notarized that he is 50 per cent wholesale and 50 per cent retail, and by presenting to you a certificate of resale number and notarizing this paper you are absolutely playing safe to sell him those tires."

Then I saw Mr. Taplin at my place of business following that. I talked to him and explained to him if he signs this letter that he is 50 per cent wholesale and 50 per cent retail I would be able to sell to him; that I had talked to Mr. Johnson, secretary to Mr. D'Orr. Mr. Sam Weinstein, whom he recognizes here in court sitting on the end of the row, came [61] with him when he came to negotiate with me. He was present when the talk occurred between Mr. Taplin and me about

(Testimony of Henry Novisoff.)

purchasing my tires. That was all that was said. I told them what they would have to do in order to sell the tires. We went upstairs and typed a letter to the best of our knowledge, and went across the street and notarized it; Phil Taplin signed it, and then gave me a deposit on that date, and Sunday they picked up the tires. He made a deposit of \$150 in cash. The total price agreed upon for my new tires and tubes was \$4,800.00. I was paid the balance with a certified check. If I recollect, it was the California Bank, signed by—the check was signed by Phil Taplin. I was paid in advance of delivery of the merchandise. He did not say anything about when delivery should take place, but Saturday, if I recollect, he said, “That is my busy day; I cannot come down, so if you don’t mind if I take Sunday, your store will not be busy and so mine isn’t, I will take delivery Sunday.” That was convenient to us, because we are not open on Sunday, so he sent Mr. Weinstein for the tires. He did not come himself. After I had already received my full purchase price Weinstein came over Sunday to accept delivery. It was in the morning between 9:00 and 10:00 o’clock. I was there. Besides Weinstein and I my son was there, and another of my employees. The vehicles brought to load the tires in were closed trucks. As to who was driving those vehicles, I think Mr. Weinstein, if I remember right, and another fellow with [62] him, but I don’t recollect



(Testimony of Henry Novisoff.)

his name; I don't know the other fellow at all. I do not see him in the court room here. There were only two men, one for each truck, one driving each truck. Taplin himself was not there. It took a couple of hours to load the tires.

Mr. Sullivan: We stipulate that the document just shown us may go into evidence.

(By the Witness):

That's the document that I had referred to a moment ago, that Mr. Taplin gave me.

(The document referred to was received in evidence and marked Government's Exhibit No. 2.)

Mr. Norcop: This is on the stationery of the Perfect-Made Tire Co. H. J. Novisoff, Mgr., 1161 South Main Street, Los Angeles, California. May 22, 1942.

I, Phil Taplin, located at 3412 Winter Street, Los Angeles, for the last five years, handling new, used and retread tires, have an average of 50% retail sales. My retail tax permit number is AA-6264.

Signed: Phil Taplin.

Witness: G. Metzner.

Subscribed and sworn to before me this 22nd day of May, 1942. Ada L. Sack, Notary Public in and for County of Los Angeles.

And seal. [63]

(By the witness:)

I gave Mr. Taplin or Mr. Weinstein an invoice for this merchandise.



(Testimony of Henry Novisoff.)

(Mr. Norcop produces a pink sheet.)

(By the witness:)

That is the invoice I am referring to. These other six or seven sheets are new tires and new tubes. This is an itemization of the summation that appears on the pink sheets. I did not have a talk with Taplin after the tires were taken away. The next day or so he came to me, and he bought some more tires on the 25th; 14 tires. He came to me, and I said, "How the dickens can you sell tires? We have only sold a few tires. I don't understand how you can dispose of them. You cannot sell them, because of rationing. We have only sold a very few." And he pointed out to me that Weinstein was connected with a lot of physicians and surgeons who were entitled to new tires. Doctors, and that through him he sold these tires to doctors with certificates. That's the answer he gave me. That's the way he disposed of them.

As to how many tires I sold to Taplin on this day, Monday, I have the record here. I have 14 tires.

Mr. Norcop: We will offer them as one exhibit, that invoice, and the supporting sheets.

The Clerk. No. 3.

Mr. Norcop: We now offer in evidence the last invoice just referred to, of the sale on the 25th. [64]

The Clerk: No. 4, the last one.

(By the witness:)

I sold my entire stock of new tires and tubes to

(Testimony of Henry Novisoff.)

Mr. Taplin, as represented by this \$1800.00 invoice, except blemished tires they wouldn't buy. I had blemished tires that had been in fire, and they wouldn't buy them. Everything else went to them.

(Photostat of certified check offered in place of original.)

(The document referred to was received in evidence and marked Government's Exhibit No. 5.)

### Cross-Examination

By Mr. Goodman:

Upon the sale of these tires to Mr. Taplin, that constituted a complete liquidation of my stock of tires and tubes. I had left one U. S. Royal tire, because I had pending a certificate for that. That was the only tire that remained in stock. As to whether upon the sale of these tires to Mr. Taplin I notified the Office of Price Administration, I asked them permission to sell them. They knew that I sold, as I stated; the secretary to D'Orr knew all about it, because he gave permission to me, and how to write that letter. After the sale was completed I did not notify the Office of Price Administration that I had sold all my new tires and tubes to Mr. Taplin, in liquidation of my business. I kept [65] a record of the sale. Some representative of the office of Price Administration subsequently called at my place of business to examine those records. They did examine them. I gave them a copy. I executed the invoice in duplicate, in accordance with the regulation of the OPA. I gave one to the OPA.

(Testimony of Henry Novisoff.)

one for Taplin and one I have in my possession here. That was all in accordance with the rules and regulations of the office of Price Administration as far as my knowledge.

The representative of the office of the Price Administration called at my place of business to examine the records of this alleged sale to Mr. Taplin a few days after the sale. They did not call back again, after the first time, to check my records any further. I told them of the sale to Mr. Taplin, and I had permission before to sell the tires. I did not ever ascertain or discover subsequently, or at any time, that Mr. Taplin was not a retailer. I knew him as a retailer. I knew he was a retailer.

As to whether I ever discovered at any time after the alleged sale to Mr. Taplin that any of the facts that he related in the letter to me were untrue, I couldn't answer that question, because I did not know it. So far as I knew, they are all true, a legitimate dealer.

This truck, or these trucks that were used to transport these new tires on Sunday, had an open back. The tires were clearly visible to anyone who would observe the truck in the rear, but they had doors to close up. I couldn't recol- [66] lect whether they were closed; that's so long. I wouldn't remember. It was during the daytime, but I left the store before they finished it. We counted the tires, and we had a gathering at the house that day, so I left after they received the tires. I left before they closed the doors at the back. I don't know where the tires went to.



(Testimony of Henry Novisoff.)

Cross-Examination

By Mr. Sullivan:

I know Mr. Paddock. He sells Murray tires, with the Star Tire & Rubber Company. He is not connected with the Office of Price Administration to my knowledge. He offered to buy tires from me. He had a customer to buy them, he says. He came in a few days before, and he was figuring to buy all the tires, and I also asked him could I sell it, and he said, "Yes, you can sell it to a man if he has a resale number; you can absolutely sell it." So the next couple of days he came and wanted to buy, and I said, "The tires are sold to Phil Taplin, with permission of the OPA."

Further Cross-Examination

By Mr. Goodman:

No representative of the Office of Price Administration ever came to me and offered to sell my tires at a commission. I know Ray H. Paddock. He sent me a customer, but he did not ask me any commission. [67]

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LOUIS C. KILGORE,

called as a witness by and on behalf of the Government, having been first duly sworn, testified as follows:

My business is detective lieutenant, Los Angeles police department. I was so employed in May of last year. I was on duty on the 26th of May, 1942. I went on at 4:00 o'clock in the afternoon. I had



(Testimony of Louis C. Kilgore.)

occasion to go *the* the vicinity of 12th and Stanford Streets here in Los Angeles that evening. Detective Leland Gerty went with me. He is also of the Los Angeles police department. When I arrived at 12th and Stanford Streets I did not immediately on arriving see any persons now in the court room. I did see vehicles there. They were a Dodge closed panel truck, and an International closed panel truck of about 50 per cent larger capacity; I should say one was about a ton and a half and the other was about two and a half tons capacity; both orange or yellow colored; backed in an open shed at the back of a service station. We had received an anonymous telephone call that there were two trucks there loaded with new tires, just before we came on duty, and the Captain sent us there to investigate. We were attached to the auto theft bureau, detective division.

After we arrived, the trucks were jammed back against the back wall. We checked the license numbers to see if they were stolen, and found they were not. We checked the motor vehicle department, and found who the owners were, and [68] found they were registered to a concern that rents trucks, located at 77th and Central Avenue.

We then rolled the smaller of the two trucks, I believe the Dodge, out a couple of feet, and got behind it, and saw that it was well barricaded with steel rods and heavy padlocks. We took a crowbar and pried up on the corner of the door. I think we

(Testimony of Louis C. Kilgore.)

jammed one of the locks off and got the door opened on the smaller truck, and found it was completely full of new automobile tires and tubes.

We then rolled the other one forward, and pried in the corner of the door and opened it enough so that we could see that it was full of tires and tubes. The station was practically deserted. There was a young colored man, about 20 or 22 years old. I saw Louis Vitagliano there. I refer to the man now present in court seated next to the man in a Coast Guard uniform. The man that is standing now. I had a conversation with him, just in front of the trucks, right after dark; I should say about 7:30. He and I were the only ones participating in the conversation. I asked him if he owned the tires, and he said he did. He said, along with five other people in partners with him, he owned the tires. He named Mr. Rose, and Mr. Taplin, as I remember; he told me who they all were, but I have forgotten the names he mentioned, but I do remember those two. I asked him what he was going to do with the tires, and he said he was going to sell them legally to people that had priority certificates; that everything was on the square and nothing illegal was going on, nor was it contemplated. I said, "That being the case, you have no ob- [69] jection if we notify the OPA that these tires are here?" He said, "Certainly not. They know they are here." Then Mr. Taplin came over, I believe, and joined him.

(Testimony of Louis C. Kilgore.)

As to whether I see him in court now, the first one of the three, I believe, over on the righthand bench. It was quite dark, and I am not positive as to the identification, because it was dark, and the station very poorly lighted. As to whether anybody called his name as being Taplin, I think so, but I am not positive, because that was a year ago, and we have had hundreds of other cases since then. I don't think I had a conversation with him when I got there. He came out with these papers, and showed them to me, showed me the invoice, the bill of sale, and the amount, Mr. Taplin, I mean. He had papers in his hand, and practically all of the conversation I had, or all of it, I had with Mr. Vitagliano.

(Document produced.)

That is not my handwriting. That was written by Mr. Gerty, my partner. I know his handwriting. That was made after we came back to the City Hall.

### Cross-Examination

By Mr. Angelillo:

I said I went on duty at 4:00 o'clock, and the telephone call had come in previous to that time. I arrived at the service station on that particular date to the best of my memory between 5:00 and 6:00 P.M. The first time I saw [70] Mr. Vitagliano was that first evening that I was there, the 26th of May, 1942. I think it was about 7:30. It was right after dark. I had never seen him before in my life that I know of. I don't think the service station was



(Testimony of Louis C. Kilgore.)

open for the transaction of business at 7:30 P.M. on that particular date. I think they were just closing up about the time we got there. That is my memory of it. There was just this one attendant there, the young colored man.

There is not a storage place directly across the street. I think it is down the street about a block south of them, down Stanford, the next corner.

The first thing I said to Mr. Vitagliano was with respect to the tires and the trucks, questioning him as to the ownership of the trucks and tires, because that is what we were trying to find out. It is not a fact that on that occasion he told me that "the tires belong to Phil Taplin." It is a fact that Phil Taplin came onto the scene shortly thereafter. Mr. Taplin show me a bill of sale and invoices, but I didn't even read them. I had taken Louis' statement that they belonged to six people who were in partnership. He says, "There are five other people in this with me and everything is on the up and up."

Mr. Angelillio: I move that be stricken, if your Honor please, as not responsive to the question propounded to the witness.

The Court: It is simply repetition of what he has [71] testified to before. The motion will be denied.

(By the witness:)

After Mr. Taplin showed me the bill of sale and the inventory, I don't remember whether he told me on that occasion that he was the owner of the



(Testimony of Louis C. Kilgore.)

tires. I don't remember that on that occasion he also told me that he had purchased them from Mr. Novisoff. My memory is that he said he had reported the matter to the OPA, or had already done so. I don't remember whether he further told me that he did not have to report them under the Act as he understood it.

After I had seen Mr. Taplin my conversation might have been with Mr. Taplin, not with Louis. I don't remember. My recollection is that the place where the trucks were was a small filling station on a corner lot, a small corner lot, with one room facing the pumps, and about 15 feet back of this one little room where they kept the cash register and so forth there was a galvanized iron shed with no doors in front, just about big enough for two trucks to be backed in it, and then adjoining that, towards east of that, between this open galvanized iron shed and Stanford, there was another room, looked like a tire retreading room or battery room like service stations have, and that was abutted on the property line at the sidewalk. That is just about how big the station and the property was.

I remember a cafe in close proximity to the place I have just described, right across the street; and there is one [72] adjoining the service station on the west. I don't remember whether the building south of this service station is a concrete building. My recollection is that this service station is not a very large station.

(Testimony of Louis C. Kilgore.)

As to whether 12th and Stanford was my beat or territory, we go on assignments all over the city. I am a detective lieutenant. We are assigned to cases all over the city, but usually only in central division.

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### WILLIAM S. FITZER,

called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

#### Direct Examination

By Mr. Norcop:

I am investigator for the Office of Price Administration. I have been so engaged since the early part of December, 1941. In May, 1942, I went to the location at 12th and Stanford Streets. That was on the morning of May the 25th. I went in along with Mr. Jack Foster, also an investigator for the Office of Price Administration. I met Mr. Vitagliano there the first time we called at the station that morning.

We told him that we had come to that address and we were interested in the tires that were stored in the two trucks in the tin shed and that we should like to know who owned the tires and what it was contemplated was to be done with them and where they had come from. Mr. Vitagliano told us at that time that the tires were owned by a friend of his, [73] Mr. Phil Taplin, and that Mr. Phil Taplin had bought them from the Perfect-Made Tire Co. and had, as a matter of fact, gone over to the Perfect-

(Testimony of William S. Fitzer.)

Made Tire Co. the day before—on Sunday that was—and had loaded the tires into the trucks and they had brought them over there and they were stored at his place of business there at 12th and Stanford purely as a matter of accommodation to Mr. Taplin. I can't positively remember whether it was at that immediate time or later in the morning that Mr. Vitagliano produced sales invoices for those tires, showing that they had been sold by the Perfect-Made Tire Co. to—that is, they were billed to Mr. Taplin.

Mr. Taplin came there at that location that day. That was later in the morning, and we talked with him about the tires that he had purchased, too. There were approximately, if I recollect correctly, 318 tires and roughly 900 tubes. We had not been able to look into the trucks completely, but we couldn't because they were backed up pretty closely to the wall, but we could see enough where the locks had been broken and the doors stood ajar so that we could see that they did contain tires and appeared to be full, to have a full load. Mr. Taplin said that he had purchased the tires. We asked him what his intended disposition was and he stated that he had planned on buying up tires wherever he could, because he believed that they would be a good investment; that he was of the impression that he would get better prices for them as they became more scarce. It was suggested to Mr. Taplin that [74] inasmuch as prices had been set by the Government on the tires, that there was relatively little



(Testimony of William S. Fitzer.)

possibility of making money on a speculative deal of that kind. And he stated that he believed that, as they became more scarce, the Government would permit higher prices for tires and that there would be an opportunity for considerable profit. We asked him how it happened that they had called for the tires on Sunday; that that was not a normal business day and that most people did not do business on Sunday, of that nature, at least, and he stated that Mr. Novisoff was going out of business and he was very anxious to get his stock moved out as rapidly as possible, and that he was anxious therefore to have them come and get them even if it was on Sunday as an accommodation to him. We asked why they were in the trucks and why they had not been put in some other type of accommodation than that, and Mr. Taplin answered that they had been unable to locate a warehouse that they felt was suitable for the storage of tires, but that after the experience of having the police officers break into the trucks they believed the thing to do would be to store them in a bonded warehouse such as Bekins; and he suggested that they would therefore store them at the Bekins warehouse down in the vicinity of, as I recall, 4th and Alameda, or in that locality. Mr. Taplin at that time stated that he had complete ownership of the tires.

The vans were yellow and red, and I am not sure but what one of them had a certain amount of black, black fenders, [75] as I recall. We took the license numbers of those two trucks.



(Testimony of William S. Fitzer.)

Later I saw the same two trucks at another location in the city of Los Angeles. We saw the trucks on East 4th Street, across from the Bekins warehouse. They were driven there by Mr. Taplin and Mr. Vitagliano. I am not positive that they were driven there by those two gentlemen, but those two gentlemen at least came down and were there present at the time that the trucks were parked on the street at that location, and they went into the offices of the warehouse, where there for a period of approximately five minutes and came out, got in a passenger car and drove away, leaving the trucks standing on the street. The trucks remained there on the street until about 4:30 or quarter to five on that same day, which was Monday, the last day that we had seen them. At that time they were driven to a public garage on 9th Place at Crocker, if I recollect correctly. I think it is called Market Garage. They were parked in there at that time. I saw that take place. I was trailing the vans. They were driven there by Mr. Vitagliano and Mr. Taplin.

There were other people there, but I do not know who they were for sure; that is, when the trucks were first driven down Fourth and Alameda at the warehouse, someone else was there because they had a passenger car there as well in which they drove away in. I don't remember whether Mr. Weinstein was there at the Market Garage or not. I have seen him on other occasions. I am referring to Sam

(Testimony of William S. Fitzer.)

Weinstein. The gentleman with the gray hair sitting here. [76]

I was present at a conversation in the Office of the Price Administration where Mr. Taplin was present. Mr. Foster was present, Mr. Dundas was present. I believe there were one or two others. I don't recollect just exactly who they were. That must have been a day or two later, Tuesday or Wednesday. There was some conversation as to what disposition Taplin intended to make of the tires, and he again stated that he was holding them for speculation; and we questioned him considerably as to the actual ownership of the tires, and Mr. Taplin stated at that time that they were owned by himself and Mr. Vitagliano and Mr. Weinstein. He was questioned as to the ownership interest of each of the three individuals and said that they owned them equally. And he was then asked if that meant that they each owned a third and had a third interest, and he said, "Yes;" that they did have. And it was called to his attention that he had previously said that he had owned them entirely and he said, "Well, that was not the case; that Mr. Vitagliano and Mr. Weinstein also owned them."

(Mr. Norcop offers a document in evidence.)

(The document referred to was marked as Government's Exhibit No. 6, and received in evidence.)

(By the witness:)

I have seen Exhibit 6. While Mr. Taplin was in

(Testimony of William S. Fitzer.)

that office he was asked to give to the Office of Price *Admission* (sic. Administration) a letter setting forth that he would [77] not dispose of the tires without first notifying the Office of Price Administration and state the information as to how or where they were disposed of. This letter was sent in by Mr. Taplin several days later.

As to whether I saw these tires or the vans subsequent to seeing them in the Market Garage, I saw them later on out at the address on City Terrace on the east side. I don't know the exact number now. The tires were at that time being unloaded and stored in a—well, a building in connection with a service station, which I presume had been used for servicing automobiles. At that time, Mr. Taplin, Mr. Vitagliano and Mr. Weinstein were there unloading the tires. Mr. Foster was with me at that time and, as they unloaded the tires or as they were completing the unloading, we went in and talked with them about the fact that they were storing the tires at that locality; and we at that time suggested that Mr. Vitagliano and Mr. Weinstein were very accommodating friends to assist Mr. Taplin in the unloading of these tires and the general care of them.

#### Cross-Examination

By Mr. Goodman:

I am not an attorney. Before I went into the OPA I was the public welfare administrator:

On this occasion of May 25th, 1942, when I went out to Twelfth and Stanford Streets when I saw



(Testimony of William S. Fitzer.)

these two trucks backed up against this galvanized shed with the tires, I did not find any violations of any of the rules, regulations or directives of the Office of Price Administration at that time. [78]

It was legitimate at that time, for a retailer to purchase new tires and tubes and transport them to his place of business under certain circumstances.

After I went out to the place at Twelfth and Stanford Streets I subsequently investigated to determine where the tires had been purchased. I found that they had been purchased from a dealer who had liquidated his stock. I also found that records were kept of that sale. Our office had been apprised and notified of that sale upon the investigation of those records. We received the information they asked for in connection with the sales. Subsequently I determined Mr. Taplin, who was the purchaser of the tires and tubes as disclosed by the invoices, was the holder of a retail sales license.

When I came out there at Twelfth and Stanford Streets and found no violations, I continued to observe the movements of the trucks and Mr. Taplin and Mr. Vitagliano, because we were not in the least convinced that people would be logically purchasing tires as a speculative investment on the basis that the prices would increase so that they would be a money-making proposition. That was my reason. Then, after I saw these two trucks moved from Twelfth and Stanford Streets until



(Testimony of William S. Fitzer.)

they reached the point opposite Bekins Storage Company I did not notice or observe any violation of the rules and regulations up to that point. Then after the tires were moved from that place to a garage or building in the rear of a service [79] station in the City Terrace district I did not observe any violation of the rules and regulations up to that point. Then when the tires were stored at the building behind the service station in the City Terrace I did not find any violation of any rules or regulations up to that point.

Subsequently I demanded that Mr. Taplin come into the Office of Price Administration. Mr. Weinstein was called into the office and I believe Mr. Vitagliano was, too, although I am not positive of that. I had conversation with Mr. Weinstein myself at the Office of Price Administration. I believe that was after the delivery of the tires to the place in City Terrace. I am not positive of that. If I recollect correctly it was a day or two afterwards. The name of Mr. Benjamin Rose was never mentioned during any of the conversations that I had with either Mr. Taplin or Mr. Vitagliano or Mr. Taplin, as having any interest in these tires. The name of Mr. Brown was never mentioned as having any interest in these tires. The name of Joseph Lieb was never mentioned as having any interest in these tires. The name of Phil Rezniche was never mentioned at any time.

When I observed these two trucks with the tires in them I did not make an inventory of the tires

(Testimony of William S. Fitzer.)

while they were in the trucks. I personally did not ever make an inventory of them. Mr. Foster at that time did not make an inventory of them in my presence. [80]

#### Cross-Examination

By Mr. Sullivan:

At the time that I went on my first visit at Twelfth and Stanford Streets, up to the time or the date on Government's Exhibit 6, June 1, 1942, I did not find any violations of the rules or regulations of the Office of Price Administration.

(Questioning by Mr. Goodman.)

As to whether it is a fact that the price of tires has gone up about a hundred per cent since that time, new tires, under the ceiling established by the Office of Price Administration, frankly, I don't know, but I don't think so.

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#### R. J. CAMPAU,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Norcop:

In May of last year I was working for Bekins Van & Storage at 25 East Fourth Street. At the end of that month I recall seeing two vans parked across the street from our building. If I recall correctly Mr. Vitagliano came to our office. He is the

(Testimony of R. J. Campau.)

man right back of counsel there. The man with his hands folded. I had a conversation with him. He was with another man at the time. The conversation was regarding the storage of tires. The substance of it was whether tires could be [81] stored and taken out without certificates. I said, "No, sir; they couldn't be." Then they just walked out the front door and said they wouldn't store them. I observed these trucks later on during the day. I observed the color was striking, orange colored. I did not see them depart. I don't believe they were still there when I went off duty.

#### Cross-Examination

By Mr. Angelillo:

I did not see any other person with them on that occasion that I now recognize. I don't recognize the other man.

The Court: Is it stipulated, gentlemen, that the person that he identified was the defendant Vitagliano?

Mr. Angelillo: Yes; so stipulated, if the Court please.

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#### GEORGE M. HOOD,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Norcop:

In May last year I was working for National



(Testimony of George M. Hood.)

U-Drive Truck Rental on Eighth and Alameda. They also had a location at 7026 South Central. It was all U-Drive Truck Rental. There was not a building at one of the places where you could [82] put the trucks indoors. They were always left out on the lot where everybody could see them. I have not produced rental records of the National U-Drive rental company under date of May 24, 1942. I do not recall on that date having any transaction with any of the following persons: Either Mr. Mac R. Brown or Mr. Joseph Lieb or Mr. Benjamin Rose or Mr. Phil Taplin or Mr. Louis Vitagliano or Mr. Sam Weinstein. I did after. I was there the day that one of the trucks came back. That was at 8th and Alameda yard. I believe it was the Chevrolet truck. There was a man with the truck with a triple "T" on the side picked up the driver. I don't know what the man's name was. Triple "T" was on the side of the truck. It was a pick-up truck with black lettering on the side, triple "T".

It seems to me on that day that I saw Mr. Weinstein come down and stand in front of the office there on the sidewalk, but he didn't stand there but a little while, and look up and down the street and he went back up the street. I took it for granted he was looking for Bob Plotkin. I had known Mr. Weinstein previous to that occasion, by him coming in and renting trucks. I see him here in the court room. The man farthest over there.

(Two sheets are produced.)



(Testimony of George M. Hood.)

(The document referred to was received in evidence and marked Government's Exhibit No. 7.)

Referring to Exhibit 7, "Jack. Checked out Jack,"—as to who that refers to, there was two Jacks on the lot. It [83] was either Jack Budd or Jack Harrington, I don't know. They worked all Sunday. The name under the "Paid" Stamp is "Frank," Frank Colombo. He is a fellow. He is still working down there. Frank Colombo is the name on the second sheet. The two Jacks are Jack Budd and Jack Harrington. I don't know which Jack wrote his name in it. There is nothing on here that indicates that I had anything to do with the checking of any or either of the trucks. That is not my writing.

(Exhibit passed to jury.)

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CLAUDE GARN,

called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Norcop:

I am a mileage rationing officer in the Office of Price Administration. I was employed by that governmental agency at the end of May of last year as an investigator. I did go to the location called 3200 City Terrace in Los Angeles, at the end of

(Testimony of Claude Garn.)

May, last year. I was accompanied by Fred White, who also was an investigator. At that time Mr. White and I made an inventory of the merchandise which was found in the building there.

(An inventory is produced by Mr. Norcop.)

By Mr. Sullivan: May I ask the materiality of this?

Mr. Norcop: This is offered directly in pursuance [84] of Mr. Angelillo's questioning awhile ago one of the witnesses, I believe Mr. Fitzer, if an inventory had been made, and to show what was in the warehouse, pursuant to the conversation or testimony that the same tires that went from Mr. Novissoff were unloaded out there at 3200 City Terrace.

The Court: That has the numbers of the tires?

Mr. Norcop: Yes; it has the numbers and quantities and sizes.

Mr. Goodman: Your Honor, the invoices which are now in evidence do not reflect the numbers of the tires.

(By the witness:)

The man who investigated with me and I made an inventory of the tires. We opened the box of tubes to find out if there was a tube in there; we moved every tire in the place to get the correct name of the tire or brand, the manufacturer's name. I don't believe the serial numbers were listed there, as I recall. They signed the inventory. Mr. Fred White and I both signed it, and also, Mr. Taplin at that time was requested to sign it and he did so. It

(Testimony of Claude Garn.)

is made up in Mr. Fred White's handwriting. It was made in my presence. I checked the sizes and brand names, Mr. White recorded them on the paper, and we both signed the document.

The Court: It will be admitted as exhibit next in order, subject to a motion to strike as to the other defendants if it is not connected up.

Mr. Goodman: May the objection also be, along with [85] any other objection, on the ground, which may already be in the record, that it is incompetent, irrelevant and immaterial, it does not prove or disprove any issue in the case.

The Court: Of course, the court can't tell at this time.

Mr. Goodman: I appreciate the court's ruling and I just want to make the record on it.

(The document referred to was received in evidence and marked Government's Exhibit No. 8.)

#### Cross-Examination

By Mr. Goodman:

Mr. Taplin was present at the time I made this inventory. Part of the time he assisted me, and part of the time he did not. He was unloading a truck with additional tires at the time, and consented to move the tires so that it would be more easy to take this inventory. He did it willingly. He co-operated with me. He did not conceal any of the tires or tubes there, to my knowledge.

(Testimony of Claude Garn.)

Redirect Examination

The biggest majority of the tires were wrapped.  
The biggest portion of the tubes were boxed.

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JACK FOSTER,

called as a witness on behalf of the Government,  
having been first duly sworn, was examined and  
testified as follows: [86]

Direct Examination

By Mr. Norcop:

I am an investigator for the Office of Price Administration, enforcement department. I have been so engaged since the first part of April, 1942. At the end of September of last year I had a meeting and a conversation with the defendant Phil Taplin at his place of business on, I believe, 3441 Malabar Street, Los Angeles. That is on the east side and the first street north of it is Winter Street, and Malabar Street is more or less of an alley which is the alley behind Winter Street.

Besides Mr. Taplin and myself there was also present Mr. Ernest, an investigator for the Office of Price Administration at that time. I asked for an inventory that he had promised me and an invoice showing the sale of the tires that had been stored in 3200 City Terrace. He furnished me with an inventory and also a bill of sale showing that he had sold these tires to Mac R. Brown.

(Document produced.)



(Testimony of Jack Foster.)

That is the invoice. There were also some other sheets showing the inventory that he handed me with it.

By Mr. Sullivan: We have no objection to this going into evidence.

(Documents produced.)

To the best of my knowledge, all of these accompanied that invoice.

(The document referred to was marked Government's Exhibit 9 and received in evidence.)

[87]

I did not see Mr. Weinstein there at Mr. Taplin's place of business on that occasion. The previous day we had attempted to contact Mr. Taplin; had gone to his place of business, and Mr. Weinstein was there at that time. Mr. Earnest was with me then. October 4th was the day I saw Mr. Weinstein, out at Mr. Taplin's place of business. Just as we arrived there Mr. Weinstein came out of the place. We asked him if Mr. Taplin was in, and he replied that Taplin was out of town.

Prior to having this conversation with Mr. Taplin which I related, and at which he gave me this exhibit, I had visited the 3200 City Terrace location. I visited it in the presence of Mr. Earnest. We found that the tires had all been removed from the City Terrace location.

Cross-Examination

By Mr. Goodman:

Before I became associated with the Office of

(Testimony of Jack Foster.)

Price Administration I was in business for myself. Service Station. I sold new tires and tubes.

I did not know any of these defendants prior to the time that I became associated with the Office of Price Administration. On that occasion that Mr. Taplin delivered to me the invoice, the bill of sale, which has been marked in evidence here as Government's Exhibit No. 9, upon delivery of these documents I did not find any violation of any of the rules, regulations or directives of the Office of Price Ad- [88] ministration.

I also made an investigation to determine where these tires had originally come from, and I had found that they had been purchased by Mr. Taplin from Mr. Novisoff. Our office had been apprised of the fact of that sale. This was a further investigation by our office to determine the ultimate disposition of the tires.

I also found on my investigation that Mr. Mac Brown, who was the purchaser of these new tires and tubes from Mr. Taplin, was an authorized retail dealer. I did not check that to determine it at that time. I checked it prior. I found that the number he gave as a licensed retailer, on the bill of sale or invoice, which is a part of Government's Exhibit No. 9, was correct. He had a legitimate place of business located at 2824 Sunset Boulevard. The nature of the business was gasoline, and he had three or four tires.

## RALPH R. WALKER,

a witness called by and on behalf of the Government,  
having been first duly sworn, testified as follows:

## Direct Examination

By Mr. Norcop: I am manager of the Arlington Van & Storage. I have been engaged in that business since the last of July, 1942. My business at that time and still is located at 3300 West Washington Boulevard. In September of last year I was in [89] business there.

None of the persons in this court room came to me on or about the 29th of September and asked me whether they could rent storage space for automobile tires. There wasn't any one asked me that. No one brought automobile tires there, and requested that I rent them space to store them. There was a conversation over the telephone. It was in the late afternoon. I sat around until 9:00 o'clock, and I imagine later than that, around 10:00 o'clock, they came in between 9:00 and 10:00. A Lilly Crescent van came in there. It backed in the warehouse. I opened up the door to run my truck out and let them in. They opened up the doors, and here was a load of rubber. As to whether either of the men who brought the truck there were persons who are now present here in this court room, I don't see any of them.

Following that some one came to remove that load of tires. They were put in the set-off space. Some one came later on to remove them from that

(Testimony of Ralph R. Walker.)

space. There were two men. I believe the sailor over there is one. I won't say for sure. He has a different uniform on now than he had on then. I mean the one to the right.

Mr. Goodman: I will stipulate that he is referring to Benjamin Rose, but he stated he wasn't sure he was the party who came there.

(By the witness:)

I had a conversation with the person or persons who removed the tires, before they were actually removed, as to [90] when they would take them out. They said they would take it *ought* at midnight. They removed it that same night. They came in about, oh, 20 minutes after eleven. I do not know where the tires and tubes went to from there. The storage was at our 1904 Third Avenue address, just across the street from my back door. They remained there about four days. I was not paid for the storage.

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### MIKE KRELING,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Norcop:

In July last year my business was my service station located at 1516 South Main. I have been in business there 14 months at that time. By business was gasoline, motor oil, tires, accessories.



(Testimony of Mike Kreling.)

I know Benjamin Rose. I recognize him as being here in court. The man dressed in a sailor suit. There he is right there.

Mr. Norcop: Do you stipulate that he is indicating Mr. Rose?

Mr. Rose: So stipulate counsel.

(By the witness:)

I had a conversation with Mr. Rose in July, 1942 at [91] my station. Al Oliver, one of my employees was present. The first conversation, I have a date here, the 21st of July. Whether that was the first or not, I don't know. The substance of the conversation that I, my employee and Mr. Rose had was, I had 48 new tires and 128 or 130 new tubes that I wanted to sell; I talked about it before he bought them. The only thing as I remember, we had given him the price of the tires and tubes, and he wanted to take it up with his partner, and would let us know in a few days. He did not make any mention as to who his partner was. He came back again. I sold them to him. This was all of my tires and tubes, my new ones. I received \$662.31 for them. Mr. Rose signed the invoice there at the time he took the tires.

(Document produced.) [92]

That is the one I am referring to.

(The document referred to was marked as Government's Exhibit No. 10, and was received in evidence.)

(Testimony of Mike Kreling.)

He did not take delivery of them that day. Possibly a week afterwards Mr. Rose came for them. He had a truck of some kind. I just don't remember. It was an open truck.

### Cross Examination

By Mr. Goodman:

I did business under the name of Mike's Super-service. I had a retail permit, a sales permit. When I sold these 48 new tires and approximately 120 to 130 new tubes to Mr. Rose I practically liquidated my entire stock. I was paid by check. Mr. Rose gave me his retail sales license. I made a record of the sale.

As to whether I made three invoices, I am not sure about that, because that was all done through—well, a young fellow I had there, Mr. Oliver, the manager. Subsequently, I imagine the Office of Price Administration were notified of this particular sale. They came over and checked my books. At the time I did not know of any rule, regulation or directive of the Office of Price Administration that I was violating. I had obtained information prior to that time that it was legal for me to make such a sale. The tires were picked up during the week, other than Sunday, and during [93] the daytime, and in an open truck.

By Mr. Norcop:

I had not known Mr. Rose before he came to see me about these tires.

(Testimony of Mike Kreling.)

By Mr. Goodman:

I knew Mr. Rose was operating a gasoline station. I knew what the location of it was. It was Olympic and Hill, if I remember correctly.

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RALPH C. EARNEST

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Norcop:

I am with the B. F. Goodrich Company, in their conservation department. I have been connected with the tire industry about 15 years, most of that time here in Los Angeles. Last year I was employed by the Office of Price Administration, from May 1st to November 1st, 1942.

In the course of my duties I met Mr. Phil Taplin. As I recall, I met him in his place of business. Mr. Foster was with me. I believe it was in the latter part of September, or the first of October, 1942. There was present besides us a Mexican boy that was working in and around the establishment. His place of business at that time was in the 3300 Block on Malabar Street. It seemed to be purely retreading and recapping and repairing. I went in and looked around. I don't recall seeing any new tires or new tubes; [94] only retread and recapping material.

At that time we asked him what had become of

(Testimony of Ralph C. Earnest.)

the new tires that were stored on City Terrace. I believe the name of the street is, and he said he had sold them. We may have questioned him about some recapping materials he was using, or repair materials he was using. That was the substance of what happened.

I have seen Mr. Taplin several times in his place of business, when we called over there. That would have been after this occasion. Mr. Foster was with me on the next occasions. At that time we questioned Mr. Taplin as to the material that he was using in the recapping of his tires.

I do not recall any subsequent conversations with him about new tires or tubes after the first visit we had when he furnished Mr. Foster with his invoice.

I know Mr. Weinstein by sight. The only conversation I had with Mr. Weinstein was in company with Mr. Foster a day or two days prior to the time I met Mr. Taplin, when he and I drove over there to talk to Mr. Taplin regarding the sale of these tires. Mr. Weinstein was in front. I don't know whether you would call it the front or the alley. It's in front of the establishment on Malabar, and we drove up and he was in front. He later went into his place of business. Then we drove up and asked him about the whereabouts of Mr. Taplin and he informed us that Mr. Taplin was out of the city, and would return in a few days. That was the only conversa- [95] tion—the only occasion I talked to Mr. Weinstein. I have talked with Mr. Vitagliano.



(Testimony of Ralph C. Earnest.)

I was in company of Mr. Foster on two occasions when we stopped and talked to Mr. Vitagliano.

When we talked to Mr. Vitagliano I was in company of Mr. Foster. I can't say that I personally did any talking. Mr. Foster did it all. At that time I was in company of Mr. Foster, in connection with another case, and was not quite familiar as to the conversation that Mr. Foster was having at that time. It was in connection with the sale of tires, but I don't remember the exact conversation right at this moment.

I do not know Mr. Mac Brown. I have met Mr. Lieb.

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### JOHN DUNDAS,

a witness called by and on behalf of the Government, having been first duly sworn, testified as follows:

#### Direct Examination

By Mr. Norcop:

I am with the Office of Price Administration. I am chief investigator. I have been with the Office of Price Administration since May, '42. I had a conversation with Mr. Taplin, in the Office of Price Administration, about the end of May, 1942. It was about the day before the date of the letter which has been introduced in evidence here from Mr. Taplin to me, which was June 1st, as I recall, and it was on that day before that date that he was in my office. There [96] was present Investigator

(Testimony of John Dundas.)

Fitzer, Foster and myself and Mr. Taplin. Everything I will relate was in the presence of Mr. Taplin. Mr. Foster and Mr. Fitzer told me of the acquisition of these tires by Mr. Taplin. Mr. Taplin stated to me that he had acquired the tires from Novisoff, and he and this Vitagliano and Weinstein were equal partners in the ownership of the tires. The substance of the remainder of the conversation was that I asked him to advise the Office of Price Administration before he disposed of any of these tires. He stated that he would advise us before he did so; that he intended to comply with the regulations entirely, and that if he did dispose of the tires in any way, or move them from their present location, that he would advise us. It was subsequent to that that I received the letter which is in evidence.

There was a reference in our conversation to an inventory that had been taken of the tires at 3200 City Terrace, and Mr. Taplin stated in that regard that those were tires he had purchased from Mr. Novisoff. I refer to the inventory that was made by the OPA; the one made by Garn and White. There was a conversation relating to a discrepancy between the number of tires on this inventory which was prepared by the investigators and the bill of sale from Mr. Novisoff; the exact number of tires which were missing. In other words, there were fewer tires on that inventory prepared. The conversation was about this exhibit. He told me that. I was told that there was a shortage on this in- [97]

(Testimony of John Dundas.)

ventory as prepared by the investigators when compared with the bill of sale from Novisoff. His reply in substance was that he did not know what occurred to them. They were not there, and that was that.

### Cross-Examination

By Mr. Sullivan:

I am a lawyer: I knew somewhat about the rules and regulations of the Office of Price Administration at that time; I knew that it was not required that Mr. Taplin give any letter to us at all. It was not demanded of him, however. I did not tell him that. I did not dictate the letter. It was received by me later. Whether he dictated it, I don't know. As to whether I told him at that time that it would be well for him to store his tires, I don't recall having said anything like that.

At the time I talked to Mr. Taplin in the Office of Price Administration, I did not find, other than the discrepancy I referred to in the inventory, any other violation of the rules and regulations or directives of the Office of Price Administration at that time. I would say that the discrepancy that I noticed between the inventory that was made up by the investigators and the bill of sale on the original sale was a violation of the then rules and regulations. It was a violation of the regulations in the sense that there was a failure to account for the tires that had been received by him in the bill of sale from Novisoff. [98]



(Testimony of John Dundas.)

As to whether he told me he did not know that was the case, I don't recall his having said any such thing. He said, in effect, as I recall it now, that he received the particular tires from Novisoff, and knew they were all there at that time. He did not know what had happened to these few tires that were missing between that time and the date when the inventory was made. We had no information at that time in our office though, that he did know, and was deliberately telling us a falsehood. Even at the present time, no accounting has been made as to where those tires are, as far as I know.

During the period of time extending from the Novisoff deal to the present there hasn't been a lot of stealing and hi-jacking of tires from dealers and others, to my knowledge. I never ran across any of that personally. I did not ever advise Mr. Taplin that he should put his tires into storage because they might be hi-jacked or stolen from him.

My recollection is that there was some conversation to this effect: Mr. Taplin assured me, not once but several times, of his desire to handle these tires legitimately, and it was in that regard that the letter was suggested. It was suggested some time during the conference—and by whom I can't tell you, but there was some conversation to the effect that the tires might very well be placed in a bonded warehouse and might then be withdrawn at any time upon presentation of a certificate. That was just discussed. Whether it [99] was suggested to him that he do it, I don't now recall. It is not true that



(Testimony of John Dundas.)

at the time that he put those tires into a bonded warehouse he could not get them out again; they would be frozen. He could get them out on a certificate. They could get the certificate from the Board, the same as on any occasion. Any dealer could sell a tire if he had a certificate at that time, but he could not sell it to other dealers unless he had a certificate. At that time the regulations provided that a dealer might sell tires to another dealer, just for the purpose of going out of business. He could not cross-stream tires from dealer to dealer just to replenish stocks.

As to whether at the time of the meeting in the Office of Price Administration, I suggested the letter at that time, I don't recall. It may very well have been that we suggested such a thing. He asked us what the wording should be and it may very well be we did suggest the wording, I don't remember. I did not tell him at that time that I suggested the letter that the law did not require him to do that. [100]

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DOUGLAS F. SCOTT,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

I am a trust officer with the Bank of America. In August 1942 I was working at the Hollywood main office on Ivar and Hollywood Boulevard.

(Testimony of Douglas F. Scott.)

I know Mr. Benjamin Rose. I see him here in court. He is the gentleman with the sailor's uniform. In the month of July I first talked with him at my office in the bank in Hollywood. No one else was present there at my desk but the usual staff in the department. No one else heard the conversation that Mr. Rose and I had. He asked us whether we would rent to him the premises at 613 North Virgil, on which we were acting in the capacity of agents for some Japanese. We eventually rented the place to him on a monthly basis, beginning on August the 1st, 1942, at \$10.00 a month. He occupied the premises there for two months, October and November and September, three months,—from August the 1st to October the 1st. He said he wanted to store some furniture and equipment. He said, as I remember, that his business was to purchase equipment and sell it.

#### Cross Examination

By Mr. Goodman:

We subsequently served notice on Mr. Rose to surrender possession of the premises when we leased that store along [101] with the store in the rear. That is the reason he moved on or about November the 1st or October the 1st, 1942. He did not tell me at the time what the type of equipment he was going to store there was.

#### Redirect Examination

By Mr. Noreop:

I asked him whether it was heavy equipment. He said it was not.

HORACE B. RANDALL,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Norcop:

My business is insurance and motor club at 5901 Sunset Boulevard. In 1942 my business had control over a building there. I have a plat of my property there. The back part of the building, where the garage is was on the premises when we purchased it in 1935. It has been in that physical make-up since.

I met Mr. Benjamin Rose just once. I had a conversation with him with respect to this property. He asked to rent storage space in it. That was on or about September 29, 1942. The space he rented from me is the space in the upper [102] lefthand corner on this plat. I circle the space rented to him. The rent was \$30.00. It was rented verbal, month to month. I don't know how long Mr. Rose occupied that space. He paid rent from October 1 to October 31. Previous to Mr. Rose occupying that space there had not, to my knowledge, been any prior business in there, not in that building.

Mr. Norcop: I offer the plat in evidence.

Mr. Goodman: I object to it upon the ground that it is incompetent, irrelevant and immaterial.

The Court: What is the materiality of the exact location?



(Testimony of Horace B. Randall.)

Mr. Norcop: We have already said in our opening statement, and there will be testimony to connect it up, that that is the location where the tires from 3200 City Terrace, or a portion of them, were stored, and Mr. Rose, we will show by another witness, transported them through the channels of trade to that place.

The Court: I will admit it as exhibit next in order.

(The document referred to was received in evidence and marked Government's Exhibit No. 11.)

#### Cross Examination

By Mr. Goodman:

This portion of the *plot* that I have described here, in Government's Exhibit 11, and which is labeled "Garage" on the exhibit, was not a clear view from the street. There was [103] some view there from the street; you could see down two driveways between three signboards. There are windows in the upper part of the door in this structure which Mr. Rose rented. I couldn't say how many. It's a garage door. I don't think I was in the vicinity of the premises at any time while Mr. Rose used the premises. He told me what he was going to store. He told me tires and batteries. I do not know when Mr. Rose left the premises. I do not know why he left the premises.



TED W. MENDENHALL,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

I am a clerk with the Hertz truck lease. With the truck rentals. That is located at 718 East 3rd. I have produced a record of my company in response to a subpoena.

I rented trucks to Mr. Rose several times. He came in and got this truck at 10:37 P.M., October 1st, and returned it 2:14 P.M. October 2nd; 76 miles.

(The document referred to was received in evidence and marked Government's Exhibit No. 12.)

This record shows what type of truck. It is a Chevrolet refrigerator, it says, panel truck, all closed. It is an entirely closed-in body all the way around, just like a panel truck, we call it. Mr. Rose did not state to me when [104] he rented the truck what use he wished to make of it. I saw the truck when it was returned. When it was returned it had four tires in it.

(Witness examines tires.)

(After examining tires.) These are the same four that was in the truck when it came in. I am able to recognize the tires because I remember the size. They all had the same tag on them. I noticed the name of some dealer sold to them. I don't know what name it was called. I am referring to this label shown me by Mr. Norcop.

(Testimony of Ted W. Mendenhall.)

Mr. Norcop: We offer these four tires into evidence at this time.

Mr. Sullivan: We object to their materiality.

Mr. Shippee: In so far as the defendant Lieb is concerned, we desire to make the special objection that they are incompetent, irrelevant and immaterial, and not tending to prove or disprove any issue as far as he is concerned.

Mr. Goodman: I would also like to ask the witness on voir dire, with the court's consent, for one or two questions before your Honor rules on the objection.

The Court: Yes, I will permit it.

(By the witness):

I said I was present when the truck was returned. I remember that Mr. Rose didn't bring the truck back. Mr. Rose did not bring the truck back. Mr. Rose took the truck out. He didn't return it.

Mr. Goodman: We now object to the introduction of the tires on the ground it is incompetent, irrelevant and imma- [105] terial, and no foundation laid.

The Court: The objection is overruled.

Mr. Norcop: For the purpose of the record only, I would like to refer to one of these tires as being Goodrich Commander and the size is 4.75-5.00-19 4-ply, and there is a pasted slip on here "From 5400 East Olympic Boulevard, P.O. Box 5700, East L.A. Branch, Los Angeles, Calif., merchandise from" in handwriting "Perfect Made

(Testimony of Ted W. Mendenhall.)

Tire Co., 1161 South Main Street, Los Angeles''; and each of the tires is identical as to size.

(The tires referred to were marked Government's Exhibit No. 13 in evidence.)

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DON BEGLEY,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Norcop:

I am with the same Hertz-U-Drive Company, at the same location as the previous witness, Mr. Mendenhall. I was so employed on the dates that he mentioned. I saw these four tires—Exhibit No. 13 at my place of business. Someone called there and discussed with me having me turn over the tires to them. I do not see that person in the courtroom now. I have been looking and haven't recognized anyone here, as I remember. Then I turned the [106] tires over to the government agency.

Cross Examination

By Mr. Goodman:

I was not there when the truck was returned. I don't know who returned the truck. I did not make an attempt to discover who owned the tires after I found out they were there, except to inquire where they had come from. I found that they

(Testimony of Don Begley.)

were locked in my office at the time. I did not then turn them over to the Office of Price Administration. I believe it was the FBI that was called on the thing. Our company made no attempt to discover who was the owner of the tires other than that we found them in the truck when it checked in. We didn't make any investigation. We knew whose possession they were in. We did not contact either the person who originally hired the truck or the person who returned the truck to notify them that four tires had been left in their truck. We didn't contact either.

#### Cross Examination

By Mr. Sullivan:

I was not present at the time the truck checked in, but the boy that did check it in just got suspicious, for some reason or other, and called the FBI. That was all we had to do. He did not tell me what his suspicions were, except the tires were rationed and he just suspected they were "hot". That is the only reason that I know of.

[107]

By Mr. Goodman:

(By the witness):

Someone called for those four tires after the truck came back and I spoke to him at the time and told him we had been ordered to hold the tires. We did not return them to the man who called for them because we had been told to hold them. If that man who called for the four tires



(Testimony of Don Begley.)

that I speak about is in the courtroom, I don't recognize him.

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SAM KELBER,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Norcop:

My present business is buying cattle in North Dakota. Previous to being in business in North Dakota I was in business in Ontario, California. My business there was primarily tires. We also handled batteries and accessories. I was engaged in that business in Ontario approximately eight years.

I know Sam Weinstein. I see him here in court. In the summer of 1942 I had a conversation with Mr. Weinstein at Desmond's, here in Los Angeles, near Sixth and Broadway. There was another party with him at the time. I see the other party in court. The gentleman with the brown coat. I [108] think his name—they call him Louis.

(Stipulated that he is referring to Louis Vitagliano.)

My wife was with me. The substance of the conversation was that I had a lot of new tires; I had decided to liquidate my tire business, and I would like to sell them; and during the course of the conversation with Mr. Weinstein he told me

(Testimony of Sam Kelber.)

he thought he could find a customer for me. That was what it pertained to. He told me he thought he could find a customer, and if he did, he would call me. He called me later by telephone. As to the substance of that telephone conversation, well, he had a customer, he thought, and he made an appointment with me to come out to Ontario, to my place of business. He came out there with Mr. Rose. I think at that time there were just two of them that came to my place of business. My place of business in Ontario was at 417 East A Street.

We discussed the price of the tires, and, as I remember it, we went up and looked at the tires, and we tried to arrive at a tentative amount; we tried to get a rough idea of what the tires would amount to. We arrived at a rough figure of \$4400. They told me that they would let me know as to whether they could handle them or raise the money to handle them.

I heard from them again. They called me, and I made an appointment to meet them in Los Angeles. I met Mr. Weinstein down here, at a Shell service station. I don't remember [109] the exact location, but it was supposed to have been Mr. Rose's station. It was a station with a parking lot in conjunction with it. If I remember correctly, around Tenth, Eleventh or Twelfth, and possibly Hill. I met Mr. Weinstein there. Just him alone. We had a conversation, and he said we were to meet Mr. Rose at the bowling alley in the next

(Testimony of Sam Kelber.)

block over. We went to the bowling alley, the two of us. We met Mr. Rose there. The three of us spoke a few words; then the bulk of the conversation was carried on between Mr. Weinstein and Mr. Rose out of my hearing, but in my sight. That conversation carried on about thirty minutes. We talked, and Mr. Rose said he could handle the tires, and gave me a hundred dollar deposit cash, and we made arrangements whereby he would come out on Sunday. That was Sunday August 1st when they came out, at my home. They took delivery of the tires that day. They came in Mr. Weinstein's car, Mr. Rose and Mr. Weinstein, and Mr. Rose's brother, as I generally understood, and two trucks, two vans.

The models themselves, so far as the motor was concerned, they were older ones, but they were closed vans, regular moving vans. I do not know who was driving those vans. It was not any of the people I have described. There were two drivers; one for each van. We commenced to load the tires and tally them. My brother was there. He came in, oh, possibly when we were half loaded, and the man that was working for me, whose name is Floyd Mason was there, and my wife. [110]

We were loading the tires, and trying to tally them at the same time, and Mr. Rose was helping his brother and Mr. Weinstein. I don't remember Mr. Weinstein helped load them or not. I think he did; when my brother came in he helped. The only incident during the loading, was a man and



(Testimony of Sam Kelber.)

woman stopped by. I did not have any conversation with these two people that stopped by. They had a conversation with Mr. Rose. I did not hear it. I made out an invoice of the tires that I was selling. I had a conversation with Mr. Weinstein and Mr. Rose. Mr. Rose told me that he had a number of service stations, and that's all in regard to the type of business he had.

(A yellow slip is produced.)

That is one of a triplicate copy out of the register we used. We used a register with the triplicate invoice copy, and that is one of them. This reflects the sale on that date, August 1st. It is in my wife's handwriting. It is a seller resale permit AA63791, and the date; the name, Benjamin Rose; and his business address, 955 South Hill; the quantity of tires and tubes, and the amount of money. This at the bottom is in Mr. Rose's handwriting, which reads: Ben Rose.

These five sheets that you are now handing me are tally sheets; some in my handwriting; mostly in my wife's handwriting; the tires and tubes as we counted them out in this transaction.

As to these bookkeeping or accounting appearing two [111] sheets that you are showing me, this was an inventory, made out of our new tires, and the floor tax, when we had the floor tax, when it first came in, of our new tires. My bookkeeper made that out. This other sheet you are now handing me is a tally. I think this had a lot to do with the price. I think the prices were jotted



(Testimony of Sam Kelber.)

down here, as I remember, of the individual tires. On the back the figures look like an addition of the amount of tires.

(The documents referred to were received in evidence and marked Government's Exhibit No. 14.)

I did not see Mr. Louis Vitagliano out there at the time of the delivery of the tires. He was at my home on Sunday, and that was the date of delivery. It must have been. He was there. He wasn't there all the time, though. He was there sitting in the front room when the tallies were made, when we were sitting figuring the prices.

#### Cross Examination

By Mr. Goodman:

I had decided to liquidate my business and go to North Dakota prior to the time that I met Mr. Weinstein. I had not closed; my place of business was still operating. I moved the new tires and new tubes up to my home. At the time Mr. Weinstein first contacted me, and subsequently, when Mr. Rose purchased the tires, the new tires and tubes were already at my home.

As to whether it is a fact that the \$100.00 that was [112] paid was paid to me in cash on July 31, 1942, I couldn't say; I don't remember the exact date. I do not recall that I planned to take the train on Monday to go to North Dakota. I planned, if the tires were moved on Sunday to leave on Sunday, but not by train. I was very

(Testimony of Sam Kelber.)

anxious that these tires be removed so my family could make the trip with me. I don't know if I suggested that they come here Sunday, or they suggested it, or both did. I know I wanted them out of there as soon as possible, so that we could go.

As to whether the invoice I prepared, dated August 1, 1942, was on Saturday, I think it was Sunday. But the invoice was made out on Sunday. It may be October 1st, but it was still made out on Sunday. That invoice was prepared on Sunday. I can't say when the arrangements were made to pick the tires up on Sunday, whether it was on Friday or Saturday.

As to whether I sold the tires to Mr. Rose at cost, it was slightly above cost. I don't remember the exact percentage that we figured. There was a percentage figured above cost, because I remember at that time the Government allowed a raise. The exact amount, though, I don't remember.

Just prior to the sale to Mr. Rose I had a retail sales license, to deal in the sale of new tires and tubes. Before I made the sale to Mr. Rose I contacted the Office of Price Administration and I told them I was going to make the sale. Not that particular sale, but the Office of Price Administration at that time, Mr. Stevens, was trying to help me find [113] the customer for them. He knew I wanted to liquidate the stock, and said if he could find a customer for me he would do so;

(Testimony of Sam Kelber.)

that if he heard of anybody that wanted to buy them. His name is Stevens, Mr. Stevens. I don't see him in the court room now. I did not contact the Office of Price Administration again when I made the sale to Mr. Rose. The tires were delivered on Sunday and we left the same Sunday;

As to whether I called the Office of Price Administration on either Friday or Saturday, just when I was about to make this sale, and advised them that I was going to make the sale, it is possible, but I don't remember doing it.

I did not know of any rule, regulation or directive of the Office of Price Administration that was being violated at the time the sale was made. I was told that it was a perfectly legal sale. During my conversations with Mr. Stevens I was given to understand that it was legal to cross stream but not up or down stream. In other words, I could sell to another tire dealer, but I couldn't sell to the consumer without a permit, or back up to a wholesaler.

Mr. Rose exhibited to me his seller's permit issued by the Board of Equalization of the State of California at Los Angeles. That is where the number was taken from that was put on the invoice. Mr. Rose gave me the number. He paid me the \$100.00 deposit, brought out a cashier's check for \$4,400.00, and we did a little figuring and there was another \$75.00 which he paid me by personal check. [114]



(Testimony of Sam Kelber.)

Cross Examination

By Mr. Angelillo:

On the first occasion that I met Mr. Vitagliano at Desmond's I did not have a conversation with him. As to whether I was merely introduced to him by Mr. Weinstein, who stated, "Well, meet my friend Louie Vitagliano"—it was something to that effect. He was not in on the conversation. As to whether he left and said he was going upstairs to buy some clothes, that I don't remember. I don't know if he walked away, but I know that the conversation was with Mr. Weinstein and he wasn't in it.

Then I made an appointment or an arrangement with Mr. Weinstein to meet at either my station or at my home. Mr. Weinstein called me first and then he and Mr. Rose appeared at my place of business.

As to whether it is a fact that shortly after the first conversation Mr. Weinstein and Mr. Vitagliano called at my home and stated to me that they were in my vicinity and stopped there, it is possible but I don't actually remember it. The tires were not loaded at the place of business. They were loaded at my home. I have a definite recollection of having seen Mr. Vitagliano on that occasion. He did not in any wise help load the trucks or remove the tires. It is entirely possible that he was there before, but, as I remember, he was there on the Sunday. I didn't have any conversation with him. The day that he was at my house he excused himself to go down- [115] town to get a cigar. I re-



(Testimony of Sam Kelber.)

member that. But I didn't have any conversation with him. The times that I did see him I did not have any conversation pertaining to the sale of tires.

#### Cross Examination

By Mr. Sullivan:

This meeting at Desmond's was not by pre-arrangement with Mr. Weinstein. I just happened to bump into him there. I knew Mr. Weinstein before that. I had a conversation with Mr. Weinstein as to what he was to get out of this transaction. I don't remember just where the first conversation took place, but he told me that he was merely trying to do me a favor; in other words, find me a customer, and he did expect something out of it. I don't remember the exact course of the conversation, but I do remember that he told me he wants some from me and he was going to try to get a commission from Rose. Mr. Weinstein did not pay me any money, though, at all.

#### Redirect Examination

By Mr. Norcop:

I paid Mr. Weinstein some money. After the tires were loaded and the tally was completed and the deal consummated. I had a conversation with him when that payment occurred. That was in the presence of my wife, and not in the presence of either Rose or Vitagliano.

He told me that Rose was not giving him anything and [116] told me he didn't like the way

(Testimony of Sam Kelber.)

Rose was chiseling on the deal, and that he hadn't gotten any money from Rose yet; and when we got through, he told me the money that I would give him I should give him out of sight of Rose, which I did.

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MRS. STELLA KELBER,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Norcop:

I am the wife of Mr. Sam Kelber who was just on the witness stand. I was at my home on the date that he has mentioned, the Sunday, August the 2nd of 1942, when Mr. Rose purchased some tires. I had a part in the transaction that day. I helped to tally the tires and tubes as they were loaded out, and I also did some of the writing on Exhibit No. 14. On the back I wrote the license numbers and the names of the truck owners that took the tires away. I think it says "Lilley & Harradine HE 4456" and "Lilley Crescent Van & Storage BE PC X 2090 BE PC W 5279 Gen. Mtrs."

As to who all the persons were that I saw there that Sunday while the tires and tubes were being loaded and before the trucks departed, there were the two drivers of the trucks and Mr. Rose and Mr. Weinstein, my husband, and this Floyd Mason

(Testimony of Mrs. Stella Kelber.)

and my brother-in-law and myself. And I think [117] Louis was there. I am almost positive he was. I refer to the man in the tan suit.

(Stipulated she referred to Louis Vitagliano.)

Mr. Rose and I had just a general conversation. I think I asked him what he was going to do with all these tires and he said he had four or five service stations and he was going to sell them to the service stations.

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SAM KELBER,

recalled.

Recross Examination

By Mr. Sullivan:

I paid to Mr. Sam Weinstein \$50, no more.

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BILL SOUKESIAN,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Norcop:

My business is radiator repairing and tire business located at 736 North Broadway. The name of the business is North Broadway Radiator and Tire Company. I am in business with my brother, Harry Soukesian. My brother and I have been in business

(Testimony of Bill Soukesian.)

there about 14 years. Our business is the selling of tires and tubes and repairing automobile radiators. [118] I know Mr. Weinstein. I have not known him very long. I first met him at our place of business last year sometime. I did not later have a transaction with him; just a conversation. That was in 1942, a summer month. I think it was probably around September. Mr. Weinstein and I were alone. I think he happened to pull up in front of our place of business and just walked in and asked me if we had anything to sell in the way of truck tires or anything; he was in the market to buy used tires; and I told him at the time we were not in the market to sell anything.

I had a conversation with him on a later occasion. I think he was back once or two or three times after that, and we were discussing tires. I told him I might sell some of my new tires to lower our stock.

I met Mac R. Brown after I had met Mr. Weinstein. He came with Mr. Weinstein. That was the first time I had met Brown. I don't recall whether anyone else came besides Sam Weinstein and Brown on that occasion. I had a conversation with them. There was no one else present besides us three. That took place in our place of business. We were discussing about our new tires, stock of new tires and tubes, if I was interested in selling; and at the time I was not very interested because I had another prospect that I was discussing sales of the tires to. I don't recall whether I told them



(Testimony of Bill Soukesian.)

or not, but I kind of stalled them off. I did not get down to discussing prices with Brown or Weinstein on that occasion, [119] I don't think. On a later occasion we did. Mr. Brown was there on the occasion when I discussed prices. Weinstein was not there then. That took place at our place of business. My brother was around. He asked, I think, at what prices I might be interested in selling. I told him "cost—plus five per cent." In other words, if we had bought on today's market we would have a five per cent margin. He said he had a few gas stations that he needed merchandise for. He said he owned a few gas stations. I think he was going to sell these tires in those stations. I think we agreed on the price and I think I decided to sell to him. I did sell to him. Mr. Brown, when I arranged to sell the tires to him, before I delivered them to him, said it would be very easy for him to dispose of them because he had so many different connections, such as these aircraft factories, where they needed tires and where they were able to get these certificates much easier.

I don't recall the exact date when I first delivered tires to him, but I have the invoices that carry the date and complete transaction.

(Invoices produced.)

(The document referred to was received in evidence and marked Government's Exhibit No. 15.)

(Testimony of Bill Soukesian.)

Those are the invoices to which I have just adverted. This card on top is a resale tax number permit. This invoice is made out to "Rappan Service." That is his service station, he said, at the time, at 2824 Sunset Boulevard. The first page says "First load". As to how many tires went out on that [120] date, September 25th, the numbers are on there. I think it was a hundred and some odd tires that went out on the first load. The invoices show the total price paid by Brown for all these tires; it is close to \$5,800; the addition to all the amounts should sum up to around \$5800. I had Mr. Brown sign every one of the invoices. The first, second, and the third page I had him sign twice, as he took delivery twice on that page, and the third, and the fourth, and the fifth, and the sixth. He signed just every one of those he signed. That first delivery took place on the 25th of September; the date of this invoice.

There was used in transporting the tires away from my station a Chevrolet truck. It is sort of a panel truck. It is all closed in, something like the packing companies haul their meats in.

Besides Mr. Brown and myself there were there on that date about two or three men. As to whether I see any of the other men in the courtroom now who were there, it is pretty hard for me to recall, because most of my business was done with Mr. Brown.

As to why Mr. Brown signed twice on one of these pages, that was because he took some tires

(Testimony of Bill Soukesian.)

in his own personal car and then the truck came back and took the others. He took the "4-600-16, 6-250-16 Standard Firestone and 1-600-16 tube" in his personal car, six tires and one tube.

About that part of the delivery he said he had a sale [121] and that he needed it right away.

On the first day, first of all, I called up the OPA and made sure that it was all right for me to dispose of my tires, and they advised me that it was all right, just so I made three forms of invoices so they could refer back to them at any time that I wanted to, and as long as they gave me their permission I went ahead and sold to Brown.

As to other men who were there, most of them were short, heavy-set fellows. It is pretty hard for me to identify any of the defendants in the case because I was transacting all the business with Mr. Brown. He is the only defendant that I had anything to do with; and the only one that I know clearly in my mind that was there. On the first occasion, I think there were two others besides Mr. Brown, and then there were three on one other occasion. These other men loaded the truck. I noticed one of the men, I think was kind of keeping his eyes out on the back end of the lot, kind of watching around, and I was asking him what——

Mr. Sullivan: I move to strike that as a conclusion.

Mr. Norcop: Just a moment. He was going to relate a conversation, if the court please, and he was interrupted.



(Testimony of Bill Soukesian.)

Mr. Sullivan: And the witness was asked for a conversation and the answer is not responsive.

The Court: Well, it is preliminary. I don't think it hurts anybody. Go ahead.

(By the witness):

I was asking them what they were afraid of and he said [122] they were afraid they might be hijacked. That is what Brown said.

#### Cross Examination

By Mr. Goodman:

As to whether at the first time that I met Mr. Weinstein and I was selling out my new tires and tubes, I was not exactly trying to find customers for them, that is, I was not very interested in it. I was kind of worried because we had quite a large stock and at that time there was so many places being broken into and it was very hard for us to buy insurance; so my mind was not made up definitely as to whether to sell or not to sell. Subsequent to the time I met Mr. Weinstein I did not have several prospective purchasers who were dealers to buy the tires. I had one other prospect besides Mr. Brown. He was a party also in Pasadena, and he was there one day when Mr. Weinstein drove up, and he said, "That's the same party I had in mind to sell to" and so he left. He did not want Mr. Weinstein to see him. His name was Reuben. I have known him for quite a number of years. We went to school together.

At that time I was not dickering to get the best price I could by the sale of my tires, either to Mr.



(Testimony of Bill Soukesian.)

Reuben or Mr. Weinstein or Mr. Mac Brown. The price was the same, regardless. At that time the price of the tires had gone up 16 per cent.

When I stated on direct examination I was conversing [123] with Mr. Brown and Mr. Weinstein about the sale of the tires, and at that time I had some one else who was interested in it, and I did not want them to know about it, my reason was Reuben asked me not to tell him he was dickering on it. I thought he had a suspicion at the same time that they were trying to sell to the same party I had in mind.

I did not liquidate the complete stock. I had left about 100 tires. I have since sold them. The balance of the tires left were sold **individually, two or three** at a time, on certificates. From the date I made the sale to Mr. Brown it took me four or five or six or seven or eight months to sell the 100 tires. As to when I last had a new tire in my place of business, I always carried a stock of new tires. We have continued doing business. I have bought new tires right along from the factory.

I contacted the office of Price Administration before I made the sale. I phoned. They told me it was perfectly all right to sell to a tire dealer. Mr. Brown gave me his address. I went by and noticed his place, and noticed the name on the service station, so I figured it was a safe transaction. He also executed a certificate. He executed a card, with his signature on it, and his sales tax number on it.

## C. A. HUMBERT

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as [124] follows:

My business is the moving and storage business at 4428 Melrose Avenue. I have been in business there approximately eight years. We do business under the name of Bay Cities Express & Transfer.

I know Benjamin Rose, I have known him since about the middle of last August. I see him in court; the man in uniform. I first saw Mr. Rose when he came to my office to see about some moving. I had a conversation with him. It was before that; in the middle of July. He was alone. My wife was there, but I walked out of the office, as he was coming across the street. He had been there once before, some minutes before that, and was across the street, and I walked outside, and met him outside, and talked to him on the sidewalk. The conversation was about getting a couple of vans to move some accessories, automobile accessories. At that time the trip was to have been from Pasadena. That was the substance of the conversation. I don't believe I saw him again—he made a tentative arrangement for a man to come on Sunday. That was August the 2nd. I didn't talk to him. I wasn't at the office at that time. I saw Mr. Rose on August 2nd, 1942. My father was in the office that morning when my two drivers left.

I went to Ontario. My wife went with me. In Ontario I went up, I believe it was on 5th Street.

(Testimony of C. A. Humbert.)

I didn't have the destination in mind to go to when I left the office. All [125] I knew was 5th Street. When I arrived at that place on 5th Street my two vans were there. One was backed in the driveway, and one was sitting on the street. They were getting tires out of the garage and tallying them.

As to whether I can identify anybody in court who was there, Mr. Rose, and Mr. Weinstein were the only two, and the truck drivers. There was also a young man that was up on the stand a while ago, and his wife, and my two drivers. That is all I know of. I had a conversation with Rose while I was there. I asked him what was going on, and he said it was all right. I was there, I imagine, five minutes, and I left for a short time, and came back again, and went down and got some gasoline, and got some beer. I treated everybody. It was a good deal. I was there when the trucks had been loaded and left. I stayed until after the trucks departed. One driver was Don Parmalee, and the other Sam Dawden. The vehicles of mine used that day was a GMC ton and a half covered van, and a Chevrolet ton and a half covered truck or van. As to whether they had any labeling or name on the outside of the vans—my original van that I always had, did not have; we were repainting it, and it did not have any lettering yet. The other one I bought as one of three from another company. It was labeled Lilley Crescent Van & Storage. I followed the trucks into Los Angeles. Mr. Rose told me to meet him at the corner of Santa Monica



(Testimony of C. A. Humbert.)

and Virgil in Los Angeles. I saw him there. He had us drive down to 613 North Virgil, and drive [126] in back, in the lot. Mr. Rose was there, and a young boy, I imagine about 18 years old. I don't know him. And the truck drivers. We pulled the trucks in. Then we decided to have lunch. We came back, and we backed each truck into the back door and rolled the tires off. That room that I put the tires in was not up to the street front. It was about that big; one third of the building. Both truckloads were unloaded into that room. The tires were all wrapped; some of them were loose, but they were wrapped. The tubes were in boxes. There was not any conversation there with Mr. Rose during the unloading that I remember. The room in which the tires were put was all boarded up, sealed up; the windows were all boarded up. Mr. Rose told me if I needed any tires he would go down to the OPA for me and save me a lot of red tape.

The next business I had with Mr. Rose was on August 22nd. I can't remember having a conversation with him from my place of business. He came over, and said to have a couple of vans meet him over—— That was not the second transaction. I am wrong. This was Pasadena. That was the 22nd. The only conversation I had with Mr. Rose concerning the trip, before I made it was just to meet him at that address. I made the trip myself. I took the same Chevrolet van, Lilley Crescent. The one that had on it Lilley Crescent Van & Stor-



(Testimony of C. A. Humbert.)

age. I went to 1850 East Colorado. There were quite a few people there. The only ones I remember were Mr. Rose and Mr. Weinstein. [127] I would say about five or six people were there. We all formed a line, and rolled the tires to the truck, and loaded them up. The loading took about 20 or 25 minutes. I did not have any conversation with Mr. Weinstein out there. Mr. Rose told me to take them to the same place where I had taken the previous loads, and he would meet me there. That was 613 North Virgil. I did that. I was alone as the driver. When I got over to 613 North Virgil, Mr. Rose met me there, and we unloaded them. Just I and Mr. Rose, as I remember.

As to the condition of the inside of the warehouse—there weren't many tires there from the first load.

As to how long it was that I had been there previously with the first two loads—according to my records it makes it 20 days. When I first brought the two loads in from Ontario, the room was I would say better than three-quarters full of tires. There were not other tires in there at the time I unloaded from Ontario. That was the first time. They filled the room better than two-thirds. When I took the tires there from Pasadena, very few tires were left. I don't know how many there were.

Mr. Goodman: I move that the answer be stricken, that there were very few tires, as being a conclusion of the witness, speculative and conjectural.

(Testimony of C. A. Humbert.)

By the Witness: I did not take time to count them.

The Court: Motion denied.

Mr. Goodman: Exception. [128]

The Court: Exception noted.

By the Witness: Around the floor of the room on that day, the 22nd, there was quite a pile of tire wrappings.

As to whether I had a conversation with Mr. Rose after unloading this single load that I brought in from Pasadena,—with respect to my invoice or bill—I can't remember that now. I gave him an invoice. He signed my copy, and I gave him the paid bill. Referring to an invoice of the Bay Cities Express & Transfer 8-22-42—that's mine.

(The document referred to was received in evidence and marked Government's Exhibit No. 16.)

(Reading): Shipper, Rose. From 1850 East Colorado to Virgil and Clinton. Auto Accessories. Three hours at \$4.00 an hour, \$12.00. Van. My own name signed.

By the Witness: Mr. Rose told me the words "Auto Accessories." I did not question him much on that. I was told to put down "Auto Accessories." Mr. Rose told me to put that down. I had one more trip on September 29th. Prior to that trip I had a conversation with Mr. Rose. He was in the office. With respect to the September 29th trip, it was some days before that, he came to

(Testimony of C. A. Humbert.)

the office, but I can't say offhand. There was always somebody in my office. I can't honestly say who was there, or who was not. My conversation with him was just on releasing the vans for that particular trip. The trip was supposed to have been Friday. It was changed. It was changed to, I believe it was, to [129] Saturday. I don't recall now. I went on the 29th. I drove one of the vans myself, and another man drove my other van. Prior to their departure on the 29th, Mr. Rose asked me to meet him at Brooklyn and Evergreen. In fact, the exact words were to drive out to Evergreen, and turn left half a block and park and wait. The conversation occurred in my office. Besides myself and Mr. Rose, Max Cramer, the other driver, was present. No one else of the other defendants here in court was present.

I used two trucks labeled Lilley Crescent. One was a Ford and one a Chevrolet; both one and a half ton trucks. They were closed vans. We drove over to Evergreen and Brooklyn and parked there for about an hour. It was late in the evening; very late—5:00 or 5:30. We parked over on Evergreen about an hour, and finally a man driving a red pickup came over to the trucks, and we followed him. That man was the defendant Mr. Weinstein. We followed him, and went up to City Terrace, on the corner of Wabash and Thornton, to a service station and repair place. We backed one truck in at a time, and loaded them. We did not drive both trucks up there simultaneously. We drove one up



(Testimony of C. A. Humbert.)

first, and the other followed up in a few minutes time. Max Cramer's truck went in first. Just a minute. I am getting a little mixed. I am not absolutely sure as to the one that went first. We loaded Max Cramer's truck first. I know that. I believe I went first, though. "We" are Max Cramer and myself. [130]

As to whether anyone else assisted me in loading the tires—Mr. Weinstein, Mr. Rose, and there was somebody there. I don't know who it was. Weinstein was there. Nobody else I see in the courtroom was there that I can remember, sir. The first truck was loaded, and left for its destination, and I stayed there and helped load my truck. The first truck was to go to the Washington Van & Storage in Los Angeles. The second truck was loaded. I was there when that took place. Somebody left with the first truck; Mr. Rose was still there with me on the second truck. I don't know whether Mr. Weinstein was there or not in the second loading. To load up the last truck took possibly a half an hour. Each truck was loaded half up. Half the tires went on one truck, and half on the other.

With respect to the truck I had at the end, it was pretty well filled up. Tires were loaded in there. They were wrapped tires. I couldn't say whether there were any tubes. The truck was to go to the second driveway west of Brooks Randall on Sunset Boulevard, and turn in there and wait. Mr. Rose said that to me. I did that.



(Testimony of C. A. Humbert.)

The first truck, that Cramer was driving was to go to the Washington Van & Storage. I couldn't say who said that, or who gave that direction. After I got out to Brooks Randall Mr. Rose was already there, and I pulled in, backed the truck in, and unloaded it. Mr. Rose and myself was all there were there. [131]

Exhibit 11 looks something like the location where I took this load of tires. This ringed part of the diagram is where I unloaded them. There were not any tires in there that I could see. There was no light in the room. We did not stack these tires in there the way we had the others. We just laid them, as those are standing now, in about four or five piles, clear out to the door; almost to the door. It was quite dark when we got through. It was late summer. Around 8:00 o'clock. Then I went back to my business, to my location. The other truck hadn't got in yet. I don't know what time it did return. I went home.

This invoice of the Bay Cities Transfer dated September 29, 1942, does not reflect the transaction I have just referred to. That is not the original. That is not the one made out for the job. I had a conversation with Mr. Rose about this invoice. That was made in the office a day or two after the tires were delivered there. My wife was present. Mr. Rose wanted to know if the OPA had called up. I told him no. He wanted to know if they had asked me where the tires went to, and I told him if they asked me I would have to tell them, so he wanted

(Testimony of C. A. Humbert.)

to know if I would tell them he took the truck from my office. I said I had to put the destination on my bill, where it was, and where I took it. Finally we made up that bill there with Mr. Foster's permission. This did not reflect the destination where I took the merchandise. I made it at Mr. Rose's request. [132]

(The Document was offered in evidence.)

This pink carbon invoice dated September 29th is one of my invoices with respect to this transaction on September 29, 1942. This carbon was made at the same time as the original. This white invoice is the original of the pink one.

(The documents referred to were received in evidence and marked government's Exhibit No. 18.)

With relation to the designation on that invoice of the character of the merchandise hauled—I put on "auto accessories." Mr. Rose asked me to do that the first trip, and as to the other trips I couldn't say. But I was told to put on "auto accessories" on the first one. This relates to the truck load that was taken by Mr. Cramer and driven away from the City Terrace address previous to my going to Hollywood. They were both trips; both trucks. There are two addresses there.

As to whether I had any other conversations with Mr. Rose other than this I have related, after the last two van loads were hauled—I can't recall any offhand. There have been quite a few conversa-

(Testimony of C. A. Humbert.)

tions, but I can't recall what he said. Mr. Rose was in several times to find out whether the OPA knew anything.

This white invoice from Bay Cities Express & Transfer, dated 8-2-42, is an invoice that bears on the first job—the Ontario job. There was some conversation with Mr. Rose came up over the name of “blank” here when it was finished [133] and I had him sign his own name, “Ben Rose.”

Mr. Norcop: We offer it in evidence.

Mr. Goodman: I object to it on the ground it is incompetent, irrelevant and immaterial.

(The document referred to was received in evidence and marked Government's Exhibit No. 19.)

#### Cross-Examination

By Mr. Angelillo:

As to the persons whom I saw at Ontario in connection with the loading or handling of the tires—the only two that I can identify were Mr. Weinstein and Mr. Rose. I can't identify anybody else, outside of the young couple that had the cars. I do not recall seeing the defendant Mr. Vitagliano here before I came to this courtroom today.



## C. A. HUMBERT,

recalled as a witness by and on behalf of the Government, having been previously sworn, was examined and testified as follows:

## Further Direct Examination

By Mr. Norcop:

When I was at Ontario, I was told to cover the vans all good for fear of hijacking on the way. Mr. Rose told me that.

## Cross-Examination

By Mr. Goodman:

At the time that I first learned that I was going to transport tires for Mr. Rose and I had a conversation with [134] him in that regard, he told me that all of the tires were registered with the Office of Price Administration. He told me that the tires were not stolen, and that it was a legal transaction.

On the occasion that I made the second trip or the second hauling for Mr. Rose to Pasadena, it is a fact that that was in broad daylight on Saturday. I can't say whether it was morning or afternoon. On that occasion, which was subsequently to the time I went to Ontario, I knew before going to Pasadena that I was going to haul tires and tubes. The second time, I knew it was tires. I suppose I knew when I went out on the second trip, before I got to my destination, where I was to pick up the new tires and tubes, that I was going to pick up new tires and tubes. I couldn't say. The third occasion was when I delivered them to Brooks Randall. At that time I figured they would be tires.



(Testimony of C. A. Humbert.)

As to whether anything was ever said to me by any one of the defendants after the first occasion as to what should be put down on any invoice, but that I followed the instructions given me on the first occasion and had written "automobile accessories"—on this third occasion, when I went out to the Brooks Randall Company, when I arrived at Brooks Randall it was just getting dark. Around 7:00 o'clock in the evening. It was September the 29th. I did not say it was dark when I got there. It was dark when we got through unloading. During the period of the day when it was light [135] I unloaded very little. By the time we got backed into the door it was just getting dark then. Maybe it was later than 7:00. I don't know the exact time. The rear of my trucks were covered with tarpaulin. They were not paneled. These tires were all inside completely covered up. Except the first occasion, we had furniture pads over the tires to hide them, under Mr. Rose's orders. The reason he gave me was that they might be hijacked. Mr. Rose was the only defendant who hired these trucks from me. He is the only one that paid me. I had no business transactions with the other defendants in this case. Not a bit; no.

I was contacted by a representative of the Office of Price Administration after these deliveries, and before the third delivery. When I made the third delivery, the one to Brooks Randall Company, I had already spoken to the representative of the Office of Price Administration. That was Mr. Foster. I

(Testimony of C. A. Humbert.)

had told him on that occasion that I had transported tires for Mr. Rose from Ontario to a place on Virgil, 613. The first time he came out I didn't know he was going to make another delivery. I was told by Mr. Foster if I was asked to go ahead and make it. He told me to make it.

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MRS. JOSEPHINE HUMBERT,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows: [136]

Direct Examination

By Mr. Norcop:

I am the wife of Mr. C. A. Humbert. I was working in my husband's business at 4428 Melrose Avenue in August 1942. I know Mr. Rose. He came there the Saturday before—Friday before August the 2nd, or I should say about seven days before August the 2nd. I saw him on August the 2nd out at Ontario. At Ontario I saw Mr. and Mrs. Kelber, and Mr. Rose. I couldn't place any of the others right now. The only conversation I had with Mr. Rose at the time was he wanted to hire a van, two vans. That was back here in Los Angeles. At Ontario I did not have any conversation with Mr. Rose at all. I came on in with my husband that day. I did not see Mr. Rose in my office again until the Friday before the 22nd of August. At that

(Testimony of Mrs. Josephine Humbert.)

time he wanted me to give Mr. Humbert a message. The words, "To have him call at his home in the evening between 7:00 and 8:00 o'clock." I saw him the next day but I didn't have any talk with him. After that, not until towards the end of September. I know that they came in on September 29th and wanted two vans. I was there then. The persons I refer to are Mr. Rose and the gentleman back there with the mustache, and this gentleman with the light coat on, light suit on. (Indicating Mr. Mac R. Brown.) (Mr. Brown stood up.) That is one of them. I don't know them by name. And this man at the end of this table here. (Indicating Mr. Vitagliano.) (Mr. Vitagliano stood up.) That is the man I am referring to. That was on the 29th of September. I [137] I couldn't remember if there was anybody else or not, but I do specifically remember Mr. Rose and the gentleman over there. They asked for two vans and wanted them around 5:00 o'clock in the afternoon to go over at Brooklyn and Evergreen, were the orders that were given to me. In my presence, Mr. Rose and I can't remember who he directed his answers to, who he talked to, but he said that they should not make the same mistake that they had previously made of loading both vans at the same time; that they should load one van at a time. I was present, and Mr.—I don't know his name, but the gentleman back there and the other one that was with him. The two I have just now previously identified.



(Testimony of Mrs. Josephine Humbert.)

Mr. Angelillo: Let us have some better identification, if your Honor please.

Mr. Norcop: All right. Heretofore they were identified as Mr. Brown and Mr. Vitagliano.

Q. Are those the two men who stood up a while ago?      A. That is right.

(By the Witness:)

They left and came back around 5:00 o'clock and they gave the directions to Mr. Humbert in my presence. Those directions were to go to Brooklyn and Evergreen.

#### Cross-Examination

By Mr. Goodman:

I am positive that Mr. Vitagliano was present there on this September the 29th. At the time that this conversa- [138] tion that I spoke of in which Mr. Rose said, "We should not make the same mistake of loading both vans at the same time; between 2:00 and 3:00 o'clock in the afternoon. He was there at that time. Rose was talking to both Mr. Brown and Mr. Vitagliano. I was in the front office of my building there. I was alone. These three gentlemen and I. I was sitting at the sewing machine. I don't know what, if anything, Mr. Vitagliano [138-a] answered to Mr. Rose. I didn't hear. I was closer to them than you are right now. I did hear the statement Mr. Rose made. I couldn't say whether or not Mr. Vitagliano answered Mr. Rose, as I can't remember the voices, but I do remember Mr. Rose. I can't remember whether Mr.



(Testimony of Mrs. Josephine Humbert.)

Brown answered Mr. Rose. I don't know whether they said anything.

### Cross-Examination

By Mr. Angelillo:

The first occasion that I saw Mr. Vitagliano, so far as my knowledge is concerned, is the 29th of September. I did not see him at Ontario. I can't remember. I cannot tell you how he was dressed on the 29th day of September. He did not introduce himself to me. I didn't hear him say anything. I couldn't say how long he was in my presence. I cannot give you an approximation of the time he was in my presence. It might have been five minutes; it might have been fifteen minutes. He did not use the telephone at my office. The only man that used the telephone was Mr. Rose. I did not hear Mr. Rose call him by any name. From that time, that is, September 29, until this date, when I came into court, I have never seen this gentleman in the interim. I have never seen him since. I couldn't say whether he was dressed in the manner in which he is now here. I was busy in the office, and I did not take notice of how they were dressed. I couldn't say whether or not he wore glasses. I describe him as a stocky man, not particularly tall, receding hairline. That's [139] about all I can say. I could be mistaken about that person's identification, but he does look like the man that was in the office that day. I may be mistaken on that one. Not the other one. Mr. Vitagliano fits the description I just gave you. But I am not sure about it. Not positive.

## REUBEN SLAVETT,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

## Direct Examination

By Mr. Norcop:

My business is the tire business. Located in Pasadena, 1850 East Colorado Street. I have been engaged in business at that address 12 years. I know Mr. Weinstein. I first met Mr. Weinstein at a service station on Mission Road, in Los Angeles. The name of the station is The Three Jacks. That was during the month of August, 1942. I had a conversation with him then. There were other people present, but I don't know what they heard of it. There were about three or four fellows on the property, and one was Sy Kirsh, and Sam Rippan. I don't know whether they heard the conversation or not. We all were standing talking to one of these fellows, on the service station premises, and Mr. Weinstein drove over with someone else at that time. I don't know what his name was, or who he was. While I was talking with the other fellow he came over and joined in the conversation; just [140] talking generally, and while we were talking it came out that I had some new tires and tubes which I was interested in selling, and he mentioned to me that he possibly could get a buyer for me. I told him what sizes I had, and the amounts, and the makes of the tires, and the price I wanted for them, and he made arrangements with me to meet a man

(Testimony of Reuben Slavett.)

at a later time, to meet the buyer, the prospective buyer. On a later occasion I met Mr. Weinstein down town in Los Angeles. We went out to get in touch with the man that later turned out to be Mr. Rose. At that time I did not know who he was. We went first to his service station on Olympic and Hill, and he wasn't there, so we went to another station. he has on West Sixth Street, and he also wasn't there, and his brother told us that he wasn't there either; and then Mr. Weinstein called. Where he called I don't know. And we met Mr. Rose later on around the vicinity of Third and Vermont, in Los Angeles. No one was with Mr. Rose, or anyone else with Mr. Weinstein and I when I met him. There was just the three.

Mr. Weinstein drove up there with me, in my car, and met Rose on the corner of the vicinity around Third and Vermont, and he got in my car, and the three of us had a discussion about the purchase of the tires. I told Mr. Rose—previously Mr. Weinstein and I had arranged at a price to ask him, and I told Mr. Weinstein that I wanted \$3,000 for my merchandise; that anything above that he could have as [141] his commission, but I wanted \$3,000. That was all I was interested in getting. So Mr. Rose and Mr. Weinstein and myself were sitting in the car, and I told Mr. Rose that I wanted \$3300 for the merchandise, and he offered me \$3000, and I said "No, \$3300 is the price." Then Mr. Rose and Mr. Weinstein got out of the car, and walked up the street. I sat in the car. And they were talking



(Testimony of Reuben Slavett.)

over the deal. Mr. Weinstein was trying to close it with him, and then they both came back, and got in the car, and Mr. Weinstein was nudging me not to come down in price; that I could get \$3300. He did not say anything, but he nudged me to let me know that I should not come down. Mr. Rose still offered \$3000. I figured I wanted to sell the merchandise; I did not want it on my hands. I said, "I will split the difference, and make it \$3150." So Mr. Rose still insisted on \$3000, and I intended in my own mind to give Mr. Weinstein \$100 off of my \$3000 price, and I would receive \$2900, and I would give him \$250 as his commission, as I was the one who dropped the price.

Then we left. Mr. Weinstein went with me, and Mr. Rose went off by himself. Mr. Weinstein and I saw Mr. Rose later in the day at his gas station. The deal was finished there for \$3150.00, and he gave me a deposit of \$200 in the form of a personal check. The merchandise was supposed to be picked up Sunday morning, at my place of business. The time set was 8:00 o'clock in the morning. I got there late, [142] at 8:30, and when I got there there was a note on the door, by Mr. Rose—It stated that he was there at 7:30; that no one was there, and he had to be at some place else at a certain time, since the trucks were going there. I did not understand clearly about that. Anyway he had to be with the truck at a certain place, at a certain time, and therefore he had to leave before I got there.



(Testimony of Reuben Slavett.)

Ben Rose's name was on the note. I hung around the place. I did not know what to make of the thing. Mr. Weinstein then drove up. I told Mr. Weinstein what happened that morning. He did not seem to understand; neither did I. And he said, "Let's go and phone, and find out." We went across the street to a telephone booth, and after making a few calls, he wasn't able to locate him, and the third time he located him. I had a conversation with Weinstein after that. The story was the same as he mentioned, that the truck had to be somewhere at a certain time, and therefore he couldn't wait. Nothing happened of moment that day. I heard from Weinstein the next day. After that Weinstein was going to see Rose about it, and I went down to see Mr. Rose. The next morning, I remember, I went down to see Rose, to find out why the deal was all off. I was alone. I had a conversation with him, and he told me the deal was all off. He did not want any part of the deal, as long as Mr. Weinstein was in it. He told me he did not want the deal. Later I saw Mr. Weinstein and he told me that he had another prospective buyer. [143] He told me he had another prospective buyer, and I met him, and we went to this place at 12th and Stanford, and there I was introduced to Mr. Vitagliano. I see Mr. Vitagliano in court. I had not known him before. A few minutes later another man approached, so Mr. Vitagliano introduced me to this fellow as the prospective buyer, and I spoke to him. We both went aside, and I spoke

(Testimony of Reuben Slavett.)

to him about the sizes and prices, and everything. I don't know what the name of the man was that I was introduced to. He is not in court so far as I know. I told this fellow—I don't know whether Mr. Vitagliano or Mr. Weinstein heard all of the conversation. They may have heard it. Or different parts of it. I don't know if they were present throughout the whole time. They were not participating in the conversation. After I was introduced, they did not participate. Later they participated again.

I mentioned to the prospective buyer, in order to make the sale complete I wanted to have the papers, the sales tax number, and I wanted to make sure the place of business existed, and I was not selling to somebody who actually was not even in the business. So this prospective buyer assured me it was, and also Mr. Vitagliano tried to assure me it was all right. Still I wasn't satisfied. I wanted to make an appointment to meet this party at his place of business. That was what I said to the man. I wanted to meet him that afternoon at his place of business. He said "Well, you better [144] not go there now. I have other business to attend to. I don't want you to go and disturb the men." I said, "How about tomorrow morning at 10:00 o'clock, before they pick up the merchandise?" He said, "O. K. 10:00 o'clock." I got a \$50 deposit from the prospective buyer, and told him also I still had the check of Mr. Rose, and my receipt for the

(Testimony of Reuben Slavett.)

merchandise, and before the deal would be final I would have to give him the check back, and get my receipt back.

The prospective buyer told me his place of business was on San Fernando Road, in Glendale. That deal did not go through. The next day I received a phone call from Mr. Weinstein telling me that the deal was all off. I went back to the station to return their money. I don't remember for sure who I gave the money back to, but I know the money was given back. After this deal was off, the second deal was off, I went back to Mr. Rose, and told him that the other deal was off, and if he wants to he could have the deal. No one was with me when I went back to Rose. He accepted the deal. The deal was then \$2900. He said he would take care of Mr. Weinstein for his commission, and I would realize \$2900 out of it. He gave me a deposit. He had a cashier's check in his pocket for \$2750 made out to me.

The time I saw Mr. Vitagliano again was when Mr. Rose came the next day to pick the merchandise up. Mr. Rose came to my place of business in Pasadena. Mr. Rose was present, [145] Mr. Weinstein, and Mr. Vitagliano, and the truck driver. All the merchandise was taken out of the racks and stacked up right in the driveway, and checked over. It was all put in the truck, and the truck drove off, and I said to Mr. Rose "How about my other \$150, I have got coming from the balance" which he did not give me yet. He told me to forget about



(Testimony of Reuben Slavett.)

it that I made enough money on the deal. I got around there with him, and I told him it didn't make any difference what I paid for the stuff, but that deal was made, and I was supposed to get that much. So he tried to give me \$75, and I did not accept it. I persisted in getting my \$150, which I had coming; and in the middle Vitagliano would butt in once in a while, and say that was all the deal was made for.

Mr. Rose and Mr. Weinstein were getting ready to drive off, and I yet hadn't the \$150, and I went to the car and up to Rose, and talked it over some more. So finally he settled for \$75, and he said he may give me the other \$75 sometime. So he gave me a check for \$75. After Mr. Rose and Vitagliano drove off Mr. Weinstein remained, and said, how about his cut, or his commission. I said, "Since the deal turned out so poorly, I really shouldn't give you anything at all, but I will give you \$25 anyway," which I gave him in cash.

These three sheets of invoices of the Dandy Tire Company, dated August 22, 1942, are the invoices that I made, representing the transaction I just described. I made out three in- [146] dividual copies. The copy I have, and I gave one to Mr. Rose, and this one to the investigators. Mr. Rose signed the invoices. This writing on the three pages is his. That was in my presence. The permit, retail sales number, was put on there in my presence. I also have the retail sales card here too,



(Testimony of Reuben Slavett.)

that was at the same time made out. He made that out at the time of the sale.

(The document referred to was received in evidence and marked Government's Exhibit No. 20.)

I had some conversation with Mr. Rose after this transaction had been completed. He mentioned to me if I knew anybody else that had new tires to sell to get in touch with him, and he would see to it that I got something out of it.

#### Cross-Examination

By Mr. Goodman:

I investigated to determine whether or not Mr. Rose was a legal retailer before I made the sale. I knew that he operated one or more stations in the City of Los Angeles where he had been selling new tires and tubes. I knew that he operated this one station and parking lot combination, and the one parking lot, that is all I knew of. He exhibited to me his retail sales license. I had communicated with the Office of Price Administration before I made the sale to find out if I could make the sale. I called up the Office, the OPA office, and asked what is the proper procedure in selling [147] new tires. They told me, and I followed that procedure. That is the way I made the sale to Mr. Rose. I did not tell them when I called that I was going to make the sale to Mr. Rose. They did not ask me and I did not mention any name. They told me to make three copies of the invoices, and to be sure that the

(Testimony of Reuben Slavett.)

purchaser was a retailer and in business. The tires were delivered to Mr. Rose on a Saturday. He picked them up on Saturday. I was there to see that he got his tires. It was around noon, maybe an hour before. Besides myself and Mr. Rose there was present Mr. Vitagliano, Mr. Weinstein, and the truck driver. I never saw Mr. Mac Brown there. I never had any contact with Mr. Mac Brown at all during this entire transaction. There were 212 new tires, and 798 new tubes.

In addition to the documents which have been introduced in evidence by Government counsel, it is a fact that I also had a separate invoice in which the total number of tires and tubes were reflected, showing the purchase price to be \$2,900.00, and stating thereon that it was for resale purposes and listing the permit number of Mr. Rose. Subsequent to the making of this sale a representative of the Office of Price Administration did not check my records to check on this particular sale. My records were checked about February, the merchandise was checked by an OPA man. After that sale was made, when he was investigating the case he was there. They have been examined. At that time I gave [148] them a copy of the invoice. Upon the sale of these tires and tubes to Mr. Rose, that practically liquidated all my tires and tubes that I had at that time.

(Testimony of Reuben Slavett.)

Cross-Examination

By Mr. Angelillo:

I am acquainted with Mr. Soukesian, on North Broadway, doing business as the North Broadway Radiator & Tire Company. I never tried to buy his stock. I tried to sell his stock for him. I was negotiating with Ben Rose only.

On the occasion that I met Mr. Vitagliano for the first time at 12th and Stanford Streets I did not ask him whether or not he wanted to buy my stock. He wasn't the one who was supposed to buy it. I did not ask him. He was not to be the purchaser. Before I got there I was with Mr. Sam Weinstein. He drove over there with me. As to whether on that occasion it was prearranged that I would meet a third party through Mr. Vitagliano—there was no prearrangement as far as I. All I know, that Mr. Weinstein was taking me to a prospective buyer. Who or where or anything I didn't know until I got there. As to whether Mr. Weinstein told me that he had a friend by the name of Louis, meaning Mr. Vitagliano, and that Louis had a friend who wanted to buy Mr. Vitagliano's stock but he would not sell it, and he would turn the purchaser over to Mr. Weinstein—I don't recall anything like that being said. All I know is that Mr. Weinstein and I went to 12th and Stanford, Mr. Vitagliano's place of business. [149] There I was introduced to Mr. Vitagliano, who, in turn, introduced me to somebody else, and that was all I know. I don't know the man's name. No deal was there.



(Testimony of Reuben Slavett.)

As to whether on the next occasion when I saw Mr. Vitagliano and Mr. Weinstein had already been with me; and as to whether he was with me on a particular morning when I saw Mr. Rose and he picked up Mr. Vitagliano some place—Mr. Vitagliano came along; that is all I know. He did not partake in any of these negotiations, except to probably interject some remark, “to get it over with.” That is all it appeared to me. In other words, he was getting tired of hearing we two argue or barter.

#### Further Cross-Examination

By Mr. Goodman:

After I made the sale to Mr. Rose I closed down my stations soon thereafter. I closed the place. I own the property there and I just closed the gates and no business.

In this transaction I did not have any dealings with nor were the names of Mr. Mac R. Brown, or Joseph Lieb ever mentioned.

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#### J. C. COOLEY,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Noreop: [150]

My occupation is photographic work. I have been engaged in that profession 22 years where I am now—at 716 North Western Avenue. In Octo-



(Testimony of J. C. Cooley.)

ber of 1942 I went to 613 North Virgil Street. I made photographs of the interior there. I have the negatives that I took. I don't know the date of that work I did there, but it was along just about that date. I was there only once. It was a Saturday afternoon. These prints are reproductions from the plates that I have with me. I think those two are duplicates. There are three different pictures. They are unretouched negatives.

(The photographs referred to were received in evidence and marked Government's Exhibit No. 21.)

#### Cross-Examination

By Mr. Goodman:

When I got to the premises—when I took this picture, three gentlemen were there. One is in the courtroom.

(Stipulated that Mr. Foster was indicated.)

I don't remember anyone else. I don't believe there were police officers there. The place was open when I got there. The door was open.

Q. I call your particular attention to this pile of paper in the front of the picture and ask you if that pile was in that condition when you first came into the place?

A. There was practically in this—they were made from two or three different views. [151]

Q. Yes.

A. There might have been piled up a little bit, but there is nothing taken in or out of the building.

(Testimony of J. C. Cooley.)

Q. Isn't it a fact that one or more of the men that were there on that day took these papers together and made a pile out of them?

A. They might have done it once, at my suggestion, to get it in the picture.

Q. Well, was it done?

A. That is long, quite a while ago.

Q. By the Court: Do you remember?

A. It might have been in one of them. I don't know. But I am sure the first—or some of them. That is probable why we made two or three different ones.

Q. By Mr. Goodman: In other words, the pictures do not reflect the condition of the premises as they were when the parties first entered into them?

Mr. Norcop: I will object to that.

A. They were first—they were——

Mr. Norcop: I will object to that.

The Court: Just a moment. If this witness knows.

Mr. Norcop: Yes.

A. I would say it represents the way it was when I came in, just merely arranging, the same thing, that is, the principal that was photographed, anything that shows in there was in there. [152]

Q. By Mr. Goodman: All right. In other words, by your answer you want the court and jury to understand that, so far as the tires and the boxes which are piles in the rear, as indicated on this photograph, they were not moved; that is a fair and

(Testimony of J. C. Cooley.)

true representation of the condition of the room; but, so far as the papers are concerned, which were scattered around the room, they were heaped together, were they not, by a representative of the Office of Price Administration, and put in a pile, which pile is now reflected in this picture marked Exhibit 21 of the Government?

A. This one might have been. These are different views, of course. They——

Q. Will you answer my question?

Q. By the Court: Mr. Witness, were those newspapers arranged while you were there so that they would show up in the photograph more than they were in their original condition?

A. It might have been the one, the last one.

Q. By Mr. Goodman: When you say “last one,” may we——

A. That would be that one; yes.

Mr. Goodman: May we have this photograph marked some way as to distinguish it from the others?

The Witness: I am not positive after that length of time.

Mr. Goodman: It is marked 21. May we have it marked 21-A?

The Clerk: Yes. [153]

(The photograph referred to was received in evidence and marked Government's Exhibit No. 21-A.)

Q. By Mr. Goodman: And isn't it a fact, Mr.

(Testimony of J. C. Cooley.)

Cooley, that the empty boxes that were scattered around the room were also brought together and thrown into the same pile, as shown in this Exhibit 21-A?

Mr. Norcop: If you know?

Mr. Goodman: If you know?

A. I don't. I don't remember about that part.

Q. All right. Can you tell the court and jury which photograph you took first?

A. That would be difficult. I had no idea I would be a witness at the time. I just went over to make the photographs of these tires, and the only thing that I really remember is the searchlight, spotlight probably put up there, so I would say now that is the only thing that I do remember.

Q. Mr. Cooley, to refresh your memory, if you examine these photographs, and calling particular attention to the one that I now have in my hand, in which the rubbish and the paper and the boxes are not accumulated in the center, doesn't that refresh your memory that that is the first photograph you took?

A. Not necessarily. I understand this is—you can see this is a different view, because these boxes with the Canyon tires on doesn't show at all in that view. [153-a]

Q. Were you given any instructions by anyone present at the time as to how you were to take these pictures and what you were to emphasize your photograph upon?



(Testimony of J. C. Cooley.)

A. No; not at all, because we had to get back in the door to get room. They practically filled the room.

Q. Weren't you told that you were to get the pile of paper and empty boxes into this photograph?

A. Do you want me to answer that?

Q. Yes; that is what I asked you.

A. All right. I said that was probably evidence that there had been plenty of other tires in there and they wanted to show that photograph——

Q. Now you are giving me the reasons, and I merely asked you if someone had not instructed you to get this pile in?      A. Why, I imagine so.

Q. All right. And wasn't that gentleman who gave you those instructions Mr. Foster, the gentleman you previously identified?

A. He was the gentleman that asked me to come over and make them.

Q. Yes. He is the gentleman that called you in to take the photographs and he is the gentleman that instructed you to take the picture, to bring out this pile of paper consisting of the boxes and the papers off the tires?

A. To show a true picture of the interior of that room [153-b] as I could.

The Court: Let me ask a question.

Q. You did not bring in any of those wrappings from any other room, did you?      A. No, sir.

Q. They were all in that room?

A. No, sir; there was just one room. There was nothing in or out.

## SAM PARSNER,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

## Direct Examination

By Mr. Norcop:

My business is tire business, 524 West Pico. I have been in business at that location about a little better than nine years. My business is tires, and recapping. Now, used and retreading. I know Mac R. Brown. I first became acquainted with Mac R. Brown the day of our transaction in September. I sold him some tires September the 9th, 1942. I met him [153-c] the same day. He came into the store and wanted to know if I had anything to sell. I told him I didn't. He asked me if I had any new tires. I told him I did; I had put them away when they were first froze. Vitagliano was with him. (Indicating defendant Vitagliano.) That is all. I sold him all I had, 38 tires. The vehicle they had when they took delivery was a red panel. I don't know whether it was a Chevrolet or an International, one of the two. I do not recall any wording on the truck. We have an invoice for what I received for the tires. That is our invoice.

(The invoice referred to was received in evidence and marked Government's Exhibit No. 22.)

As to the conversations I had with these gentlemen when they bought my tires—there wasn't much to it, merely I told them I would have to find out

(Testimony of Sam Parsner.)

if I could sell them to them, and they said for me to get in touch with the OPA, which I did; and Mrs. Parsner called the OPA and she got in touch with a young lady and she turned her over to someone else, and finally got the third party and phoned to her, and she said it was O. K. to go ahead and sell. We checked with them. He said he had a station on Sunset Boulevard and we checked him with the Signal Oil Company and we checked the station to get the stamp number of his resale permit, checked it back and forth. And we sold him the tires. That was all there was to it. [154]

#### Cross Examination

By Mr. Goodman:

Mr. Weinstein didn't buy anything from me outside of the truck, about a month before that. The only man in connection with the sale of these 38 tires was Mr. Mac Brown. I had no business with Mr. Benjamin Rose. Mr. Vitagliano helped him load. Outside of that helping him load, that is all he had to do with reference to the transaction that I remember. Mr. Brown paid us the money. When I sold the 38 tires, that is all I had. I had some tubes, and they were supposed to buy them, but they didn't. We made four copies of the invoice because the OPA told us to make an extra copy for them for the record. We got the resale permit of Mr. Brown. He signed a card to that effect, but before we released the tires we checked the station and asked the attendant at the station to repeat the number



(Testimony of Sam Parsner.)

to us and also describe Mr. Brown as a retailer. I found that he certainly had a station. The tires were delivered to him during the day, broad daylight. It had happened to be on the 9th.

### Cross Examination

By Mr. Angelillo:

There wasn't any name on the truck that I can remember. The name "California Provision Company" does sound familiar. It was a red truck. I couldn't say whether Mr. Vitagliano was the driver of that truck. I can't remember whether he [155] drove it. I know he helped us get the tires out of the room and load the truck. Whether he had a conversation with me on that day I don't remember having anything—We were talking about nothing pertaining to tires, I don't think. He did not tell me he had a station down at 12th and Stanford. He did not tell me he had a station. He didn't tell me why he was there. He didn't tell me that the reason why he was driving this truck was because he was covered by insurance for any truck that was brought on to his premises, and these were old clients of his that he was servicing their truck. If he did, I don't remember it. He did not say that he wanted to do business in a hurry, that his load was—nothing like that, just straight legitimate business the way it looked to me. It didn't look to me that he wanted them put on the truck in a hurry so he could take them over to Sunset Boulevard. We just went up in the room and loaded it, took



(Testimony of Sam Parsner.)

our time; in fact, I was prepared to call the bank in case he gave me a check, to see the check was all right. There were three of us went upstairs, that is, Mr. Brown, myself and Mr. Vitagliano, and then we threw some tires down and Mr. Vitagliano went downstairs and loaded them, if I remember right.

As to whether I don't have any too clear of a recollection, at this time about how soon he started to help—naturally, I didn't keep—I didn't have a watch in front of me. He was wearing service station clothes. Such as an [156] ordinary service station man would wear. Whether he drove the truck away, I couldn't say. I don't remember. I couldn't say he drove the truck away.

#### Redirect Examination

By Mr. Norcop:

This invoice is in Mrs. Parsner's handwriting.

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(The government then called Mrs. Parsner; before she was sworn Mr. Goodman asked if she was called only to verify that the invoice referred to by Mr. Parsner was in fact in her handwriting. Mr. Norcop stated that in addition it was intended to show by her testimony that she made out the invoice and placed on it the license number of the truck. Mr. Sullivan stated that he had no objection. Mr. Goodman stated, "You can offer it into evidence without any further objection and we won't object to it, so you won't have to call her." Mrs. Parsner was then excused.)

**JACK FOSTER,**

recalled as a witness by and on behalf of the Government, having been previously sworn, was examined and testified further as follows:

**Further Direct Examination**

By Mr. Norcop:

Subsequent to the 9th of September, 1942, when Mr. [157] Parsner sold his tires to Mr. Brown, I had a conversation with Mr. Brown respecting that invoice of Mr. Parsner's. That conversation was at 2824 Sunset Boulevard, Mr. Brown's place of business—Rappan Service. Besides Mr. Brown and I there was another man present, that is, he was on the lot, but he was not in listening to me at that particular moment, and another investigator by the name of Donald Harwood of the OPA. I asked Mr. Brown if he had purchased Mr. Parsner's tires and Mr. Brown stated that he didn't want to say whether he had or not. And then, after questioning him for some length of time, he said that—I told him that I had seen the bill or showed it to him, and he said, "Well it doesn't have my signature on it." So I told him I didn't care to [157-a] argue over that fact. I want to know if he had bought the tires that he said he had. I asked him where the tires were and he said he had sold them. I asked him who he had sold them to and he told me that he didn't remember the name, but he would produce the invoice; that he didn't have it at that time and if I would come back the next day, why, he would show me the invoice. On the following day I went back to see Mr. Brown and Mr. Brown showed

(Testimony of Jack Foster.)

me an invoice of which he gave me a copy. It had "T & M Tire Service, 1620 South Broadway." That is the copy he gave me.

(The document referred to was received in evidence and marked Government's Exhibit No. 23.)

As to whether on that occasion, that is, either the day I first spoke to Mr. Brown there at 2824 Sunset, or the next day, when he gave me this invoice, I ascertained whether he had any new tires in his station—he had four or five new tires that had been there for some length of time. On the last occasion when I picked this up I asked Mr. Brown whether any of these tires were the same tires, and he told me they were not; that these tires had been there for a long time, and he wiped his hand across the dust to show me that they had been there for some length of time; and these tires were in the lube rack in the rear, if I remember correctly, a double rack, where Mr. Brown would ordinarily put his tires.

### Cross Examination

By Mr. Sullivan:

When I first went to Mr. Brown's place of business and [158] I asked him if he had purchased the Parsner tires, he told me that he did; in substance I testified to that; but he didn't care to state to me whether he had or had not bought the tires of Mr. Parsner. In substance that is what I testified to. Then I stated I had a conversation with Mr. Brown,



(Testimony of Jack Foster.)

and I showed him the invoice which I had in my possession, and which indicated that I knew about the Parsner sale. Then I asked Mr. Brown and Mr. Brown told me that he would give me an invoice if I came back the following day. That was to show me how he had disposed of the tires, and to whom. When I came back the second day, to get the invoice, he gave me the invoice which is here in evidence. As a matter of fact, when I first appeared at the Brown place of business, and I was told to come back the second day with the invoice, I did not talk to Brown at all. No, I talked to his helper on the first day, but the second day I went there I talked to Brown. The third day I got the invoice from Brown. I did not talk to his helper regarding it at all. His helper knew nothing about it; had not seen any tires. I talked to Brown, and Brown told me the next day to come back and get the invoice. And I got the invoice.

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### FRANK MONTGOMERY

called as a witness by and on behalf of the Government, having been previously sworn, was examined and testified further as follows: [159]

#### Direct Examination

By Mr. Norcop:

My employment at the present time is at Douglas Aircraft. I have been working for Douglas one year. Prior to May 1st 1942, I was proprietor of



(Testimony of Frank Montgomery.)

the T & M Tire Service, 1620 South Broadway. I went into business there in the early part of 1942, and was in about 11 months. In the year previous to my going to work for Douglas I discontinued it from March 1, 1942. I had a truck in that business, a '37 Ford pick-up. I sold it May 27 of last year. I have not had anything to do with that truck since. I have been out of the tire business since the first of March, 1942.

As to Government's Exhibit No. 23—I have never seen it before. I don't know Mac R. Brown. Just from the evidence submitted in court here, I picked him out. I have not had any acquaintance with him. I did not buy any tires from Mac R. Brown at any time. This is my wrong sales number. My sales number is not AA 17452. My sales number is AA 89008. I still have it. I did not have anybody employed by me at any time by the name of Jack Briffit. I did not buy any tires of this description after I went out of business. I was in the used tire business; not new tires. I handled new tires just on consignment, that was all, but not these.

### Cross Examination

By Mr. Goodman:

I did have a couple of employees working for me. [160] One is named Frank Chamblin. He was mostly doing piecework. My partner and I operated the business. The other man employed by me was my brother. Nobody other than my own relatives worked for me. My partner's name was Elmer Turnquist.

(Testimony of Frank Montgomery.)

Redirect Examination

By Mr. Norcop:

Mr. Turnquist was working for the Firestone Tire & Rubber Company, but we had dissolved partnership about three months previous to that, so the business was all in my name. The business was mine three months before the first of March, '42.

Recross Examination

By Mr. Sullivan:

My partner was not using that firm name, T & M Tire Company. I am positive he was not. It stands for Turnquist and Montgomery. No one else is using that firm name to my knowledge. I don't know anything about any one that might use that name of T & M Tire Service, for the purpose of buying tires. There has not been more than one occasion for the T & M Tire Service Company to buy any tires. As I said before, we never handled new tires. We just hold them on consignment from the oil company. This is the only time that it has come to my attention that the firm name of T & M Tire Service Company has been used in regard to the purchase of tires. That's all that ever came to my attention—just the incident here, that has been testified to. [161]

## HENRY IMMERMANN,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

## Direct Examination

By Mr. Norcop:

My business is the piano business at 246 West 87th Street, Los Angeles. I have been engaged in that business about 30 years. In connection with my business here I have a sales tax number with the State of California. This is my permit. (Referring to a document produced by the witness.) That's AA 17452. As to Government's Exhibit No. 23, the second to the last line on the document, I find my retail sales tax number on there. It's exactly the same. I have never had any dealing in buying new tires. I never drove a machine.

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## JAMES B. GRAHAM

called as a witness on behalf of the Government, after being first duly sworn, was examined and testified as follows:

## Direct Examination

By Mr. Norcop:

Before I went into service my employment was General Manager of the California Provision Company, 1119 East 12th Street, in Los Angeles. I know just one of the defendants in this case—Louis Vitagliano. I have known Mr. Vitagliano about 8



(Testimony of James B. Graham.)

or 10 years. From the California Provision Company, to his place of business, at 12th and Stanford, it was one [162] block. I loaned him trucks several times. It was common practice to loan him trucks occasionally. I don't remember the license numbers of any of those trucks now. That is my signature and I wrote that letter. Refreshing my recollection from this letter; I loaned it to Mr. Vitagliano on September 9, 1942; license No. PC-R-5363; International Truck. I recall having a conversation with Louis Vitagliano before I loaned him that truck. He came into the general office, and asked to borrow a truck, as he had several times before. He asked to borrow a truck. I loaned it to him, because there was nothing wrong with it. He mentioned something, as I remember, about hauling oil.

#### Cross Examination

By Mr. Angelillo:

As to whether I am definite about the date, September 9th—at the time I wrote this statement, it was on September 14th, just 5 days after the occurrence occurred. As to whether I know whether he borrowed the truck in question on September 29th—it is too long a time since then. I wouldn't say.

Prior to rationing, or prior to 1941, Mr. Vitagliano had borrowed that truck on a number of occasions. He borrowed it in 1942 on a number of occasions. He serviced our equipment out there. And he had done so for some years last past. I think about 6 or 7 years altogether. On some occa-



(Testimony of James B. Graham.)

sions prior to this particular incident I had known of my own knowledge that he had hauled motor oil used for automobiles, [163] and brought it to his place of business, or to other places of business. I did not hesitate to loan him a truck any time he asked for it. I had seen oil on that truck.

As to whether I have any particular recollection about this particular occurrence that he said he was going to haul oil, or whether it is just my assumption because he had hauled oil before this occasion—it may possibly have been an assumption, but whether the subject of oil was mentioned at the time, I don't know. We had quite a few conversations in regard to our business dealings at the time.

Prior to this particular occasion, and during the time that he would borrow that truck, I knew that he personally was insured; that is, he had insurance, no matter where he drove that truck, as long as he drove the truck. He had previously told me that.

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PAUL B. PARMELEE,

called as a witness on behalf of the Government, after being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Norcop:

I am working at the Miles Transfer Company, transfer business. Before that, I was doing the

(Testimony of Paul B. Parmelee.)

same thing for the Bay Cities Transfer Company. In the middle of the summer of 1942, I was employed by the Bay Cities, the Humberts. I don't believe I know who the defendants are. I do not know Mr. Rose by that name. I know the man in uniform by [164] the name of Sam Blank. As to who else I know, of the people over there—I can't say that I know any of them. On August 1, 1942, while I was working for the Humberts, I did go with one of the trucks to Ontario. The other truck driver that went was Sam Dowden. I know the gentleman who just came back into Court here. I don't know him by name, but I believe I do; I believe I have seen him before. Before I left Los Angeles to go to Ontario, we were given an address on a slip of paper to go to 501 East 5th Street, Ontario. That is where I went to. I found a private residence there. I see persons in Court that were there on that occasion. I saw Sam Blank, and I believe this gentleman here.

Mr. Angelillo: Indicating Mr. Vitagliano?

By the Witness: That's right. I do not know his name. I also saw Mr. and Mrs. Humbert out there, and the other truck driver, Sam Dowden, and several other people that I don't seem to recognize, if they are here. Mr. and Mrs. Humbert were there when I arrived and the other truck driver. We got there together. We backed up to a double garage and proceeded to load two van loads of tires and tubes. There was some con-

(Testimony of Paul B. Parmelee.)

versation between Mr. Blank, and somebody else there, but not that I remember. There was not any conversation on the part of Mr. Vitagliano that I remember. As to what Mr. Blank did out there—we all pitched in and loaded these tires. The other man helped also. The Humbers stayed until we had finished. As to Exhibit No. 19—I [165] couldn't swear that that is the one. My signature, and the other truck driver's are down here at the bottom. I find my signature on there at the bottom. The date of this is August 2. (Document produced.) I believe this document is one of the documents that I had with me on that trip. I had the load weighed on a public scale enroute to Los Angeles from Ontario. It was west of Puente. I don't know exactly the name of the place. I know where the scales are. This weight slip was not received by me after the load had been weighed.

(The document referred to was marked Government Exhibit No. 24 for identification.)

### Cross Examination

By Mr. Goodman:

I saw the invoices for the delivery of these cars that I delivered from Ontario to the place on Virgil Street. I saw who signed for the delivery of those cars. It was the gentleman in uniform here to your rear. I did not have the ticket at the time that it was signed. I saw it subsequently. Government's Exhibit No. 17 is not one of the exhibits that I saw. I did not make that



(Testimony of Paul B. Parmelee.)

trip designated on this exhibit. I never had anything to do with that trip. As to Government's Exhibit No. 16—I did not make this trip from 1800 East Colorado to Virgil. In fact I made only one trip, which was on August 2nd. As to Government Exhibit No. 19, I made this trip. I saw the signature on the bottom of [166] that invoice. I was not looking at it when the man signed it, because I saw him signing the invoice on that date.

As to whether the signature on the bottom here is Ben Rose—it seems to be there. I didn't get this ticket from that man. As to whether when I was loading the tires, the man in the sailor suit, and Brown were there during the transaction—I don't remember. Some of them did not refer to him as Mr. Rose that I can remember. It has been too long ago. I did not know before I came into the court here today, before I started to testify, that this gentleman here is known by the name of Benjamin Rose, from that invoice.

Now that I have refreshed my memory with Exhibit No. 19, it brings back to memory that I heard that his name was Rose, but at that day his name was Sam Blank. I did not know his name was Benjamin Rose until I saw that name on the invoice. I saw his name on the invoice immediately after we got through with this business. That was on the same day of the delivery.



(Testimony of Paul B. Parmelee.)

Cross Examination

By Mr. Angelillo:

I don't think I am confused in identifying the person behind you with some one else who is at the counsel table. I don't remember seeing any one at that table out there, except that man. I saw Mr. Rose there. I can not tell you how he was dressed. I talked with him. I don't remember the conversation. There was considerable conversation during [167] the time of loading, and during the time of unloading. I remember Mr. Humbert being there on that occasion. I remember Mr. Humbert bringing beer out there to me. I believe this person drank beer with me on that occasion. He was pitching the tires up into the truck. I was loading them. I was on the truck loading them. There were four of us working all together. There were five of us all together. There were three men there, and the other driver and myself.

As to whether there was a person whom I knew to be Mr. Gilber, who lived at that place on 5th Street in Ontario, and whether he was pitching tires—I did not know who lived there. He did not identify himself to my knowledge. He did not introduce his brother to me to my knowledge. I imagine there were first names used of the various individuals there, but I don't remember what they were. There were three or four on the ground pitching tires to me when Sam was on the ground, my partner, the other truck driver. The other

(Testimony of Paul B. Parmelee.)

truck driver's name was Sam. As to whether there was anyone else in addition to the truck driver whose name was Sam—there was Sam Blank. This man that I now know to be Ben Rose was pitching tires.

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### SAM RAPPAN,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows: [168]

#### Direct Examination

By Mr. Norcop:

My business is gas station and tire business at 800 North Mission. I owned the Rappan Service, at 2824 Sunset Boulevard. Prior to 1942 I sold it to the Signal Oil Company. Mr. Sam Weinstein and Mac R. Brown operated it. I had known them before they took over the physical operation of this station for Signal. Off and on I had known Mac R. Brown about five years previous. I had known Mr. Weinstein about a year. I cannot fix the date any more clearly as to when I gave over the station to Signal, but we have the sale made out, which states on it. This document you are showing me is the sale of stock in bulk. The date is October 15, 1941. From that date I did not have any ownership or control over that station. I have taken it back since. I reacquired the station December 16, 1942. My last residence was 2451 West Silverlake Drive. As the crow flies,

(Testimony of Sam Rappan.)

I would say that is practically half a mile to three-quarters of a mile from the place. Between October 15, 1941, and the time I reacquired the station I did have a truck that had T & M Tire Service printed on it. Indirectly, I bought it. The document you are showing me assists me in recollecting when I bought it. I would say seventh month, 14th day of 1942. We bought the truck from a fruit man. He is in the fruit business; his market is on 9th Street or 8th Street. I don't know his name, because my brother-in- [169] law made actually the transaction. That's why I don't actually know his name. My brother-in-law's name is Adolph Hoffman. (A check is produced.) That's the check I issued out to my brother-in-law, which he paid for, cash.

(The document referred to was marked Government's Exhibit No. 25 for identification.)

I was out of business, and I went back into business. I don't remember the exact date I went in, but it was around July, maybe a little earlier, 1942. The truck was acquired a few days later; I would say maybe two or three weeks. I don't say exactly the date, because I don't remember, outside of the check, which was made out when I bought the truck, the same identical time. As to whether I did or did not park my truck in the location at 2824 Sunset Boulevard in that period of time—the truck has never been parked outside of being in that location. I was in there often.



(Testimony of Sam Rappan.)

I would probably go to the place and pick up the check I had coming once a month from Mr. Brown, and see Mr. Jack Kirth, and some of the customers of mine I would see in there. I had a feeling for the place, and I would stop in and say hello, or something like that, and go about my business. I did not take the name of T & M Tire Service off the truck. I disposed of the truck several weeks after the freezing of the tires. I acquired the business on the date that the check was made out. That would be the 7th month, 1942. I had it up to the time of the freezing of [170] used tires. I disposed of the truck sometime probably last November, or Christmas.

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FRED H. DOANE,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Norcop:

My occupation is Sergeant of Police, Los Angeles Police Department. I have been with the Police Department of Los Angeles 21 years in October. The first part of October 1942 I was assigned to the Wilshire Division; the last part I was assigned, and still am assigned, to the University Detective Bureau. I recall going to the location of 613 North Virgil, in the month of October. I



(Testimony of Fred H. Doane.)

went to North Virgil, I believe it was, in September, about the middle of September. I was alone when I proceeded to that point. When I arrived there, I met Mr. Foster, and another gentleman. I see Foster here. Later I met Mr. Rose there. When I first arrived at the vicinity of 613 North Virgil, there was Mr. Foster and another OPA man. I first saw Mr. Rose on the lot north of 613, I believe it is; that building north of 613 North Virgil. After Mr. Rose was there, there was Mr. Foster and another OPA man I mentioned. A different one from the first one. They changed. I had a conversation with Mr. Rose. We drove in on the lot, and we recognized [171] the OPA man, and recognized Mr. Rose's car on the side road. I got out of the car, and walked over to Rose's car, and told him I was a police officer, and asked him if he had a key to the rear of the building. He said he did not, and I told him that the OPA said he had that place rented, and they wanted to look in there; and he said he had no key to that building. Mr. Rose said then, "Are you placing me under arrest?" I told him no, I was not placing him under arrest; that we wanted to talk to him there about the building, and we wanted to go in there, and look at the stock in that building. With that Mr. Rose said, "Unless you are going to place me under arrest I am going to leave." At that time he started his car. I reached in through the window, intending to turn the key off. He grabbed my arm, and pushed it down, and started his car, and went toward the back, made

(Testimony of Fred H. Doane.)

a lefthand U-turn around some buildings, and as he went around the buildings, he went so close as to scrape them; he was trying to pull his wheel away from the building. We followed, and got about two-thirds along, in other words, to the rear of a garage of another building in the rear of 613, and I stopped the car and got out. I told Mr. Rose to get out, and he told me that he was going to kick my God damned teeth out. I told him he might do it, but another officer was coming from the police department who wanted to talk to him, and I was going to stay there until this officer got there, and Mr. Rose stayed there [172] until the other officer got there. After the other officer got there I left. The other officer who arrived there was Officer Hamilton from the Wilshire Detective Bureau.

### Cross Examination

By Mr. Goodman:

The occasion of my going out there was I had a call from Mr. Foster. I mean I received a call at the station from Mr. Foster, asking for Mr. Hamilton. He told me over the phone that he had discovered a warehouse full of tires. I believe there was something said about before I could go into this warehouse I would have to get a search warrant. I didn't go in any warehouse. I did not have a search warrant when I went out to this place where I saw Mr. Rose. Mr. Foster didn't say anything to me over the phone about a search

(Testimony of Fred H. Doane.)

warrant. Mr. Foster told me that he had found a warehouse full of tires, and we had had numerous burglaries from service stations where a large amount of tires were taken, and I was vitally interested in the burglary end of it. I didn't tell Mr. Foster over the phone that before I could go into a place like that, I would have to have a search warrant. When I arrived there, I met Mr. Foster before Mr. Rose got there. He pointed out to me the warehouse where the tires were stored. That place was locked. At that time I did not have a conversation with him in reference to having a search warrant before I could go in there. I believe a little while later I said if it was a State case [173] before we could go in there we would have to have a search warrant. Mr. Foster did not tell me that if a federal officer broke in there, they wouldn't be able to get the evidence, they would have to have a State officer to go in. I looked into the window to see what was in there. I saw there were tires there. When Mr. Rose came, he asked me if I was going to arrest him. I told him I would detain him until the other officer arrived, and if he was clean, the other officer would clean his skirts. I didn't tell him I was detaining him until he opened the door. I told him I was detaining him until the other officer arrived. I asked him if he had the key to the warehouse. And he said he did not have it. He told me he was going to leave. I told him I was going to detain him until the other officer



(Testimony of Fred H. Doane.)

was there. I could have arrested him on suspicion, but I didn't. I told him there was another officer coming over there. The other officer was Mr. Hamilton, also a state officer. I don't know what Mr. Hamilton was going to do when he got there that I couldn't do before he got there. I wanted him to wait until Mr. Hamilton got there, because Mr. Foster asked for Mr. Hamilton, and worked with Mr. Hamilton before on these OPA cases. Mr. Foster was standing by while this conversation was going on between Mr. Rose and I. He did not tell me to detain Mr. Rose. He didn't partake in the conversation. When Mr. Hamilton got there, I don't know whether Mr. Rose again tried to leave. I left [174] then. Just as soon as Mr. Hamilton drove up, I said, "This is Mr. Rose, and he has got a bunch of tires in there." I knew he had a bunch of tires, because I could see them through the window. I knew they were his tires, because the OPA said so. I was going by what Mr. Foster told me. It is a fact that Mr. Rose said at that time that he wanted to call his attorney, and wanted to have his attorney there. Just before Mr. Hamilton got there, I told him when Officer Hamilton got there, he could have anything he wanted. Until Mr. Hamilton got there, he couldn't do anything, although he wasn't under arrest by me. I was detaining him then. At that time I didn't know of any crime that Mr. Rose had committed when I detained him.



## D. J. HAMILTON,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

## Direct Examination

By Mr. Norcop:

My business is that of police officer of the City of Los Angeles. I have been with the Department six years. September 19, 1942, I was working auto thefts and burglaries at the Wilshire Detective Bureau. I did on that date go to 619 North Virgil Street, Los Angeles. When I arrived there, I saw Mr. Dundas, Mr. Foster, Mr. Earnest, the defendant Rose, and Officer Doane there. Mr. Doane just said, "I am turning the case over to you," [175] and he left. I went over and I talked to the defendant Rose, and asked him if he owned—if he had any access to that building. He told me, "No." And after a conversation he said he didn't have anything in the building, and we knew that he had tires—not that the defendant had tires, but that there were tires in there.

So he finally told us that he had a key to the building, but it was home, and he wanted to go home and wanted to call his attorney. I said, "All right. We will get in the car and go over to the station. We want to find out about those tires in that building."

So he got in the police car with me. I placed him under technical custody, placed the handcuffs

(Testimony of D. J. Hamilton.)

on him, ordered him out of the car, and knowing that he had the keys, took the keys and opened the door and pushed him into the storeroom where the tires were and there were nine tires there. I went in and kept Mr. Rose in custody, and explained to him I would have to take the tires over to the Wilshire Station to have them checked, and took Mr. Rose and the nine tires over, had a talk with him and he stated at first that the tires were not his, that he had sold them to somebody else, and they were being left there. And so I asked him—I told him I would book them as ordinary property, and give him a receipt, and after a check was made that they would be released back to him. I made a record of the numbers of the tires. [176]

(Thereupon the tires were rolled in and placed before the jury box.)

(At this point, the following took place: Mr. Goodman asked permission of the Court to approach the bench, which permission was granted. Thereupon, Mr. Goodman, together with Mr. Sullivan, Mr. Norcop and Mr. Angelillo approached the bench. Mr. Goodman thereupon stated that he objected to the tires being rolled into the courtroom and exhibited to the jury, and that his objection was based upon the following grounds, to wit: that they were incompetent, irrelevant and immaterial, were illegally obtained, and were being rolled before the jury's eyes for the purpose of creating prejudice

(Testimony of D. J. Hamilton.)

and appealing to the passion and prejudice of the jury by virtue of the tremendous size of the tires and on the further ground that there was nothing unlawful in the possession of the tires by the defendant Rose, and that the tires were not connected up in any way with the other defendants, or with the commission of any overt act. (The tires that were rolled in and exhibited to the jury were very large, new truck tires.)).

Mr. Shippee: I don't think those ought to be exhibited unless they have a ceiling price on them.

By the Witness: Those are the tires that I took over to [177] the Wilshire Station and which I brought here to court myself. I have checked the numbers on those tires with the record of the numbers I made when I took Mr. Rose to the Station.

(The tires were admitted in evidence.)

The Court: For the record. Don't you have a list of them?

Mr. Norcop: Yes, we have a list.

By the Witness: That is a list of the tires there. There is one more tire than is listed. The smallest of them is a duplicate. It is this one here (indicating). The two I am pointing out now are the same type. They are eight tires listed but nine tires here.

(The document referred to was received in evidence and marked Government's Exhibit No. 26.)

Rose asked me for the tires about three or four weeks later.



(Testimony of D. J. Hamilton.)

Cross-Examination

Mr. Goodman: The occasion of my going out to 613 Virgil Avenue was Mr. Foster of the OPA called and stated that there was a warehouse full of tires. I did not have a conversation with [178] him over the telephone. I didn't have a conversation with anybody over the phone. My captain said to meet him at 613 North Virgil Avenue. I did not have a search warrant when I went out there. I didn't have a conversation with my captain in reference to having a search warrant to go in there. When I got to the place where I ultimately took these tires, I did not have a conversation with Mr. Foster in reference to having a search warrant before going in there. Nobody talked about a search warrant at that time that I recall. Mr. Rose was there when I arrived there. He stated he didn't have a key to start out with. I didn't pull my gun. On the way out there, or when I got there, I did not have any evidence on hand that Mr. Rose had or was about to commit any felony or misdemeanor. I had no evidence at that time. I did not proceed to handcuff him because he told me he did not have the keys to this warehouse and I believed that he did. He was hostile, and I was taking no chances, and not knowing the man and knowing that there were tires in there, and I didn't know where they came from, the reason I handcuffed the man was I had reasonable grounds to believe they were stolen tires. It is an old abandoned building with a grating at the front, and a little room in the back. That appeared to be



(Testimony of D. J. Hamilton.)

abandoned at the time. I didn't know that until I got there. When I got there and I saw new tires stored in this place, that is the only evidence that I had on hand which gave me a suspicion or a belief that [179] they may have been stolen tires.

It is not a fact that I had talked to Mr. Foster and I went out there on other occasions at which time he told me that he believed these tires belonged to Mr. Rose. Based upon the evidence I had there, because I saw the tires in a place, locked in there, I then proceeded to place Mr. Rose in technical custody. And I placed the handcuffs on him.

As to what I mean by "technical custody"—Well, in other words, as far as I am concerned, he is—if I am going to take him in to the station and he is hostile, or anybody is, we take them into technical custody such as to book him on suspicion of burglary or any felony. He was under arrest. He wasn't booked, but he was under arrest at that time. I didn't tell him what he was being arrested for. He was arrested on suspicion at that time. He was placed in technical custody until I could find out what was going on in regards to the tires in the storeroom. After I talked to him at the station there, he was released. I didn't take the key off his key ring. I took the keys. I opened the door. I didn't have a search warrant at the time. I was not violating the law if I have reasonable grounds to believe there is a felony to be committed or stolen property. Then I went in and took the nine tires.

(Testimony of D. J. Hamilton.)

They were in the same condition as they are now. I gave Mr. Rose a receipt for them. (Document produced.) [180] This is the receipt.

(The document referred to was marked Defendants' Exhibit A for identification.)

Then after I got the tires to the station, having issued this receipt, we made an investigation to determine whether the tires were stolen. I found they were not. They were not stolen. Then after I found out that they were not stolen Mr. Rose communicated with me. He called me first by telephone. It wasn't more than a week after the date upon which I took the tires. I don't remember the conversation with Mr. Rose other than the fact that I referred him to the Office of Price Administration, to Mr. Dundas. I did tell him on that occasion, "You can come and get the tires. We found out they were not stolen."

After I told Mr. Rose he could have the tires, they were available to him, that he could come out and pick them up, then I called Mr. Dundas, the attorney for the Office of Price Administration. Substantially, I told him I was going to deliver the tires to Mr. Rose, and he told me not to deliver them and said that he wanted me to hold them until this trial is over. When Mr. Rose called for the tires, I said "I am sorry, I can't give you the tires. I have received information from the Office of Price Administration that I have to hold them." I said I was suspicious of the fact that they might have been

(Testimony of D. J. Hamilton.)

tires that had been stolen or burglarized. It is a fact that all divisions all over [181] the city had considerable difficulty with stolen tires, and that the tire dealers were having considerable trouble in keeping their tires in such places and under such lock and key that they could not be hijacked, broken into and stolen. It is a fact that particularly in reference to gasoline stations where tires were stored, that they were breaking into gasoline stations and stealing new tires and tubes. I do not recall that many of the retailers, in order to avoid such losses, used other places to store their tires and tubes. I was working with Mr. Foster on these various tire matters for some time. And as a result of my association with that particular office there had come to my knowledge many of these cases where there had been thefts and burglaries of tires and tubes.

As to whether Mr. Foster, when he talked to me about this matter, told me that he believed that some of the tires were stolen—well, we have had complaints of burglaries in those areas. Mr. Foster was working on it from the government's standpoint, and I was working with Foster through the Statewide burglary detail. When I came out there, I believe Mr. Rose asked the right to call his attorney and be represented by counsel. When he went into the station he could have the right.

As to whether that was long after I handcuffed him and released him—not long after. I handcuffed him first, then I opened up the place and



(Testimony of D. J. Hamilton.)

went in there, and it was [182] subsequent to that that I removed the handcuffs. When I got into this place, I was not there when any photographs were taken. The place as it appeared to me when I went in was similar to what it is in the photograph, and I have seen it. (Counsel hands photographs to witness.) When we first entered, this (indicating) was the photograph of the tires. The unwrapped tires had been taken out when this was taken. I saw this pile of paper and boxes there when I first entered the premises. There was debris scattered around there. I don't believe Government's Exhibit No. 21-A represents a fair and reasonable presentation of the appearance of that place when I first entered there. This one here (indicating), this one here looks more like entering from the door. This (indicating) is a side view here. I did not see anybody there gather the paper and boxes and place them in a pile there.

Exhibit 21-A is a fair presentation of that place. They are all fair. They are taken from different angles. When you enter, you see it from this angle (indicating), and this (indicating) was taken from the side. That was taken from the side, because as you come in there is a door leading into the outer room, you come in this way. There were not any of the tires unwrapped or any tubes removed from any boxes before the picture was taken. I am positive. These tires were removed before the picture was taken, but they were unwrapped, and that is the reason they were taken. [183] They were taken be-



(Testimony of D. J. Hamilton.)

fore they were unwrapped. Maybe one or two were taken from a pile indicated in the photograph, and most of them were over here (indicating), the larger tires.

When I got there, there was those nine unwrapped tires there. Just nine of them.

As to how many unwrapped tires I see upon these photographs, upon the two different photographs—(pointing) these two are not totally unwrapped. They weren't totally unwrapped. They were like that, but they are partially unwrapped. I had the handcuffs on Mr. Rose from the time we loaded the tires until we got into the station. Not more than about a half an hour, because I left right away with Mr. Rose, as soon as we got the tires in the car. I didn't wait until the photographer came there. I left as soon as I got the tires in the police car, and took Mr. Rose with me. That took half an hour to forty-five minutes. I went Virgil to Pico, and West Boulevard, which can be made in about fifteen to twenty minutes. That is to the Wilshire Station at 4526 West Pico. I was on Virgil and Commonwealth, or Melrose, I believe; close to that location. I was not there while all the inventory was taken. I stayed while a part of the inventory was taken, but that was when we were loading the tires. The total transaction of getting Mr. Rose into the station didn't take over 45 minutes. I don't know how long it took to take the inventory.

## HENRY L. DOYLE,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

## Direct Examination

By Mr. Norcop:

I am service manager for the Smiling Irishman, 921 South Hoover. We sell used automobiles. I have been with that place about a year and a half. In September 1942 I was there. Mr. Rose called on me. This gentleman in the uniform there. No one else was present. I had a conversation with him in the shop. Mr. Rose came in and asked me if I wanted to buy any tires and I told him, "No." I asked him what they were. He said he had new tires. I asked him the price. He said they were \$35.00 apiece in lots of a hundred or more. I asked him what price they would be in lots of four. He said, "Thirty-seven fifty." And I asked him how I could get in touch with him and he left a card with me. This card is the one. I did not place any handwriting on the card. Mr. Rose did—in my presence.

(The document referred to was received in evidence and marked Government's Exhibit No. 27.)

I did not have any transactions with Mr. Rose as a result of that conversation.

## Cross-Examination

By Mr. Goodman: [185]

I never bought any tires from him. I was a

(Testimony of Henry L. Doyle.)

used car dealer, not a tire dealer. I did not ever sell tires. I had a retail sales tax permit. The firm has had it for about six years. They have been in business about six years. We did not sell tires of any kind. We sold used automobiles, and service. When we sold these automobiles we often put tires on the automobiles if they needed them, prior to the freezing. We did not put any tires on any cars after the freezing order. We never acquired any. Our permit number is X 2721.

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DONALD D. HARWOOD,

a witness called by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Norcop:

At the present time I am employed with the Office of Price Administration as *as* attorney. I have been with the Office of Price Administration since the 14th of September, 1942.

I have seen Mr. Rose before. The first time I recall seeing Mr. Rose was on a Saturday morning at approximately 11:00 o'clock, on North Virgil Street, 613, in Los Angeles. Mr. John Foster was there. There was no one else besides Mr. Rose there that I saw. I had no conversation with him. I overheard a conversation. The conversation was that



(Testimony of Donald D. Harwood.)

Mr. Rose after Mr. Foster stated hello, or made some greeting, [186] that he, Mr. Rose, in driving down Virgil Street had seen Mr. Foster, and drove in the lot to say hello. Foster asked Rose what he was doing. He said he was fooling around; and Rose asked Foster what he was doing, and he, likewise, said he was just fooling around. Mr. Rose, while sitting in his automobile, stated to Foster, "Why don't you get wise to yourself and quit fooling around with this OPA", or Government stuff, and Mr. Foster said, "Well, that was his business," and Mr. Foster said, "Well, if you don't watch out, you might get hurt." Mr. Rose stated—did I say Foster? Mr. Rose stated, "If you don't watch out you might get hurt." That is all the conversation I can recall.

Mr. Goodman: I move to strike out the answer on the ground that it is incompetent, irrelevant and immaterial, and does not prove or disprove any issue in the case, and is only brought here to inflame the minds of the jurors, your Honor.

The Court: Motion denied.

(By the Witness:)

I met Mr. Mac R. Brown on or about the 15th day of September, at a service station on Sunset Boulevard. Mr. John Foster was with me. Mr. Foster and Mr. Brown had a conversation in my presence. There might have been a party in the service station, but there was no one within hearing. We were in an automobile, and drove into the serv-

(Testimony of Donald D. Harwood.)

ice station. Mr. Brown, as I recall, was in the part of the service station [187] which is used for a sort of an office as well as battery repairs. There were a few miscellaneous items lying around. Mr. Foster asked Mr. Brown if he had the invoice, and he produced an instrument in writing, and handed it to Mr. Foster. Mr. Foster asked Mr. Brown where the tires were. He said he did not know. He had sold them. Mr. Foster stated, "You will have to get the tires back." Mr. Brown stated, "I don't think I can get the tires back. I will try to get them back, but I don't know what I can do about it, or how." That's the substance of that conversation. I saw the instrument that I have referred to. Exhibit No. 23 is the instrument in writing which was handed to Mr. Foster on the date that I mentioned by Mr. Brown.

I have met Sam Weinstein. I first met him either on the same day that I had met Mr. Brown, sometime thereafter, or the following day; I do not now recall when. I met him at a service station, to the best of my recollection, on Riverside Drive. Mr. John Foster was with me. There were two or three individuals in the service station, pumping gas, and standing around. I do not know who they were. Mr. Foster had a conversation with Mr. Weinstein of a very casual nature. The only thing I can recall, Mr. Foster asked Mr. Weinstein either if he knew a certain party, and I do not now recall the name of, if he knew where he was. That is about all I can remember. It was very brief. [188]

(Testimony of Donald D. Harwood.)

Cross-Examination

By Mr. Goodman:

I am an attorney-at-law. I have related all the conversation that took place on the occasion of September 14th that I overheard between Mr. Foster and Mr. Rose to the best of my recollection.

As to whether I recall Mr. Foster addressing Mr. Rose in these words: "Well, I am going to stick with the OPA, because I have already got two deferments. I don't want to get into the military service as long as I can help it." No such statement was made.

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NORMAN IRWIN,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Norcop:

I am an auditor employed by the Eagle Oil Company. I have been with the Eagle Oil Company since September, 1940. I know of my own knowledge any of the subsidiary concerns controlled by the Eagle Oil Company. There is one; that is the Golden Lubricants, Incorporated. The Golden Lubricants, Incorporated has had a station at San Fernando and Winchester Streets in Glendale. I don't recall when it was opened. I have looked over the records in the company, and the station



(Testimony of Norman Irwin.)

was closed on April 6, 1942. [189] Golden Lubricants had a California sales tax license number. Golden Lubricants had about 45 stations all together. They used the same master sales tax number, but each station had a sub permit, which was different in each case. The station at San Fernando and Winchester Road in Glendale had a specific number. I know definitely the station did not carry on business at that location after April 6, 1942. No one by the name of Joe Munn was ever employed by my company.

#### Cross Examination

By Mr. Goodman:

Our various service stations that we operated under the subsidiary of Golden Lubricants, Inc., each had a number. No. 28 was given to the station on San Fernando. We had a station at 2800 San Fernando Road, and we still have it. The station at San Fernando Road and Winchester is station No. 28. That is the one that is closed. Golden Lubricants, Inc. had in the past year in the neighborhood of 350 employees. I have been with the company since September, 1940. From the time which I was first employed there had been about 350 employees hired and fired from that time on up to September the 5th, 1942. I have a permanent record in which the names of all employees are listed. I have not brought that record with me. It has not come to my knowledge in the past year or so that sales of new tires and tubes were being

(Testimony of Norman Irwin.)

made to some representative, who represented himself as a representative [190] of the Golden Lubricants, Inc. This is the first time I ever heard of this beyond the fact that I had a letter from Mr. Norcop, from the OPA. There were not any other instances in the last year in which someone, representing himself as a representative of the Golden Lubricants, Inc., had bought tires as a retailer and given our number. My company did sell new tires and tubes up to the time of the freeze; and thereafter, subject to the rules and regulations and directives of the Office of Price Administration. We kept a stock of new tires on hand at some of our stations. I don't believe we made any sales at all during the year 1942 from dealer to dealer. The records probably would show that Golden Lubricants is a corporation. I have had occasion to look at the Los Angeles Extended Area Telephone Directory for June of 1942. I was at one time familiar with the listing of the various stations operated by the Golden Lubricants, Inc.

I would not say that the stations that are designated in the book as of June of 1942 were those in operation at that time. They would not indicate, because we opened and closed stations periodically, and oftentimes the listing remains in the book after the station has been closed.

I was not at the place at San Fernando and Winchester on the date that the station closed. As to what information I base my statement on that it closed exactly on that date—Well, I have my

(Testimony of Norman Irwin.)

files here, my inter-office com- [191] munications from one department head to another, advising that such took place. I have the closing service station report marked "Final" by our auditor who was doing the field work at that time. My opinion is based upon inter office communications and not upon a physical examination of the premises, of the physical closing of the station.

The manager was in charge of that station on and before April 6, 1942. I believe his name was Lou Zweighoft. I do not know where he is now. I can not describe the man's build and description. I never saw him. I do not have a picture in my files anywhere or any record with my company. I do not have his fingerprints, nor his birth certificate. In addition to Mr. Louis Zweighoft, I am sure there were other persons employed there, but I can't say who. The direct hiring was done by the station manager and approved by our field man, field salesman. The man who met the employee first and who hired him was not in all cases the station manager. I do not know whether or not it was in reference to the particular station that we are discussing here this morning. I couldn't say as to whether Mr. Zweighoft hired a man there and then sent in the information to our office. I would not know whether or not the man he hired was giving the correct name or not, other than from what was given me by the station manager. The master number of Golden Lubricants, Inc., that is, their seller's resale number was AGX 6285-8. [192]



(Testimony of Norman Irwin.)

(A Document is marked 28 for identification.)

Mr. Norcop: Let the record show Mr. Goodman has handed the original of the document that I was asking to have marked for identification, and also, a state resales certificate which has the same number, and we will ask that they all three be put together as one exhibit.

(The documents referred to were received in evidence and marked Government's Exhibit No. 28.)

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### HERMAN STEINBERG,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Norcop:

I operate a service station and tire place at 901 East 9th Street. It is at the corner of 9th and Wall. I have been engaged in business there about two years. During that time I have carried some stock of new tires. I know a Mr. Sam Weinstein. I know Mr. Phil Taplin here. Both of these men came to see me at my station in the past year. I don't remember exactly the month but it was just a couple of months after the freezing order came into effect. No one else was with them. Just these two gentlemen. I had a conversation with them.

(Testimony of Herman Steinberg.)

They saw the big stock of tires that I had, new ones, and they asked me whether I wanted to sell them, and I told them that I didn't care to [193] sell them because I would rather sell them retail, without the freezing some day, that I figure that the Government will release them and then I will be able to sell them retail at better prices. That is about all the conversation. They did not come back on any other occasion. I did not sell them any tires. I was not liquidating my business at that time.

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RAY H. PADDOCK,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Norcop:

My business at the present time is field secretary for the Independent Retreaders Association in Los Angeles. Prior to three weeks ago, I was a tire jobber. I was in that business here for 13 years. Among the persons seated at the table—the only man that I remember meeting is Mr. Rose,—yes; Mr. Brown, too. I called on Mr. Rose about a year ago at a Shell station. I would say it is on Tenth and something, Flower or Figueroa or Broadway, one of those streets, here in Los Angeles. I did not have a conversation with him there. I left my card

(Testimony of Ray H. Paddock.)

and he called on me at my office a week or ten days later. My office was at 316 Commercial Street, L. A. Warehouse. No one came with Mr. Rose the first time. No one was present besides Mr. Rose [194] and I that I recall. I had a list of tires that was available in the California Warehouse that was just down the street. I told him that. I showed him the list and he looked to see. He wanted to know what condition they were in and we went down to the warehouse and thoroughly examined them. I would say there were approximately 60 or 70 tires there. They were all new, in wrappers. They were the property of Guy Bryan. I then took him over and told him that they were the property of Guy Bryan and left them there, left Mr. Rose with Mr. Bryan. I left where the tires were and went just down the street to Guy Bryan's there. Mr. Rose went with me. I saw Mr. Bryan there. No one else was there besides Mr. Rose and Mr. Bryan and I. I left and came on back. I left he and Mr. Bryan to go ahead and make any deal they wanted to. I introduced Mr. Rose to Mr. Bryan. There was no conversation other than what I have told you about that at that time, because I left. I don't know. My memory isn't clear on just how Mr. Brown got into the picture, unless Mr. Rose told me that Mr. Brown was going with him over to see Mr. Bryan. I am not clear on that one.

I don't think I have seen Mr. Brown before. I think I remember Mr. Brown from years back in his service station out on Sunset Boulevard. Mr.



(Testimony of Ray H. Paddock.)

Brown is the fellow with the bald head. The one that stood up awhile ago. That is Mr. Brown that I refer to. He is the one I had known on Sunset [195] Boulevard some years ago.

### Cross Examination

By Mr. Goodman:

I was never employed by Mr. Guy Bryan. I never acted as a jobber for him. I was never trying to sell these tires for him. Mr. Bryan at one time was a carload buyer of tires from me. He was one of my very big customers.

The occasion of my going to see Mr. Rose was Mr. Bryan asked me. Mr. Bryan had released from the government a stock of 60 or 70 tires that were in a warehouse on Commercial Street, and he asked me if I knew where he could dispose of those tires and offered me five per cent if I could sell them for him. I took the list from him. I called on Mr. Rose for the purpose of selling him some new tires and tubes for and on behalf of Mr. Bryan on a commission basis. I never made any sale. Mr. Rose did not buy the tires. I knew that Mr. Rose was a retailer, licensed to purchase those tires. Nothing wrong about the attempted transaction that I knew of. I don't think a sale was ever made with Mr. Bryan.

### Cross Examination

By Mr. Sullivan:

Mr. Brown did not have anything at all to do with this transaction with me personally, only Mr.

(Testimony of Ray H. Paddock.)

Rose intimated that Mr. Brown would have to approve it. Mr. Rose took Mr. Brown with him to consummate the deal. I did not have any conversation with Mr. Brown. I did not overhear any conversation between Mr. Brown and Mr. Rose. As to whether I saw Mr. Brown at Mr. Bryan's place when I went there—I am not sure of that one. It might have been Rose told me that he was talking to Mr. Brown. I wouldn't say that, that I did; no.

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#### NATHAN LEVY,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Norcop:

My business is Service Station Operator in Los Angeles. I have been engaged in that business 10 years. At the present time I have three stations. In connection with my service station business I handle new tires. I know Mr. Vitagliano, Mr. Lieb, and I know Mr. Weinstein slightly. I was in the business that I have just related in the first half of 1942. In that connection I saw Mr. Vitagliano in March, 1942, at my service station at 8th and Wall Streets. Besides Mr. Vitagliano and I, there was a man there. I don't know who it was. I think he was participating in any conversation that may

(Testimony of Nathan Levy.)

have occurred. He was with Mr. Vitagliano. He did not come with Mr. Vitagliano. He was driving another car. He wasn't anybody in my employ. I had a conversation there at that time with Mr. Vitagliano.

I was a dealer in tires at the time. I was authorized [197] to sell tires; I was a dealer in new and used tires. I did not have any further conversation with Mr. Vitagliano on any other subject at that time that I remember definitely. On another occasion he discussed tires with me. It might have been one or two months later. No one else was present then besides Mr. Vitagliano and I. It must have been at the bank, at the California Bank, at 9th and San Pedro. He told me he had some tires and if I was interested. I told him, "No; I was more or less through." And he asked me if I knew anybody else who was interested in tires and I told him I did not.

As to whether he mentioned the quantity that he was talking about—Well, approximately, it might have been up about \$15,000.00 worth of tires.

#### Cross Examination

By Mr. Goodman:

I was still in business at the time that Mr. Louis Vitagliano offered to sell me some tires on the last occasion. I still had my retail sales permit.

#### Cross Examination

By Mr. Angelillo:

I had known Mr. Vitagliano for some time prior



(Testimony of Nathan Levy.)

to this transaction that I talked about. I had seen him frequently at the California Bank quite often. My place of business is in close proximity to where two of his places of business were formerly located. I believe I knew or had [198] been told by him that he had three places of business. I was further told by him that he was liquidating two of them.

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NORMAN IRWIN,

recalled.

Further Direct Examination

By Mr. Norcop:

I have brought a list of the 45 service stations of the Golden Lubricants, together with the California sales tax permit numbers. This is it. This has on it a number that I saw here this morning on one of the invoices that was exhibited to me. The number I see here that I saw here this morning is AGX-6285-8. I find that number on the original invoice there, the white one of Exhibit 28. My sheet shows that that station was located at San Fernando and Winchester. My information that I brought as to the closing date of the station is merely verification that it was closed on April the 6th, 1942.

Cross Examination

By Mr. Goodman:

As to whether Golden Lubricants, Incorporated purchased new tires and tubes at some central office, or whether they were purchased by the managers

(Testimony of Norman Irwin.)

of the individual stations—The original inventories were purchased by Golden Lubricants from our tire store on 3300 Sunset Boulevard.

As to whether when we made purchases of new tires and tubes through that central location we used or gave any other sales tax number other than “AGX-6285-8”—That would [199] depend on which station was buying the tires. We bought the tires there for all the stations, for each station. We would not on all our separate invoices indicate separate sales tax number for each station. We would indicate the master number only. Then we would distribute the tires to the stations as they needed them in the original set-up, for the original stock. The master number of Golden Lubricants, Inc., is not “AGX-6285-8”. It is “X-6285”. No “8” and no “AG”. I have the list that I brought with me. That is exactly the way I took the information off the permit. This list I have here does have the number AGX-6285-1. The only difference between that number and the one he gave me is the last number. It is not necessarily a fact that the last number following each one of these numbers represents the number of the station. That was put on by the State. We did have the number AGX-6285-8. During the time this station was in operation, No. 28, the number that I have here on my list is the same as I have on this item AGX-6285-8; which corresponds to the number on Government’s Exhibit No. 28, AGX-6285-8. I did not bring a list of the various employees. I have not investigated any of the

(Testimony of Norman Irwin.)

other matters that I testified about this morning on the witness stand, between that time and this afternoon.

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WILLIAM J. DAVIS,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified [200] as follows:

Direct Examination

By Mr. Norcop:

Mr. Norcop: If there isn't any objection, I would like to have the list the witness referred to marked for identification.

(The document referred to was marked Government's Exhibit No. 29 for identification.)

By Mr. Norcop:

My occupation is Service Station Operator. I have been engaged in that work about 10 years. In May, 1942, I was engaged in that work. I was then working at 500 South Atlantic. I was employed by Ulrich. I operated the station. I have seen this document dated 5-7-42 before. It is in my handwriting. I made a sale of the merchandise that is listed on this piece of paper.

(The document referred to was marked Government's Exhibit No. 30 for identification.)

On the occasion of this sale, which is represented by this Exhibit No. 30 for identification, two men



(Testimony of William J. Davis.)

came in and wanted to buy some tires. As to whether I see either of those two men here in court—They look similar to the men that came in. I am not positive its exactly the same. One man, on the corner there, and another man over there, but I am not so sure about the other man at the far corner there, with gray hair. (Pointing to Mr. Weinstein and [201] Vitagliano.) They came there in a vehicle—I have the license number marked down. There must have been two vehicles. I have two license numbers there, so I think it was two vehicles. I delivered the tires at the same time the men came there. They took them. They were paid for. The amount of money that is shown on the invoice was what I received. There was no conversation—just mostly about the price; how much I wanted for them. That's about all. I wanted to make sure it was a dealer. I did not have this document in my possession all the time there—just part of the time, up until the time that the OPA—one of the men came out and gave me a receipt for it. I had lost it for a little while. In checking the tires to see if they got the right amount I missed the slip, and one of the men had this in his pocket. I said, "I would be in a bad fix without any slip at all to show the sale." These figures at the top of this document are the license numbers that I have mentioned in my statement. That's what I marked down. These other figures to the left, and a little below the ones I just looked at are my figures. I marked them

(Testimony of William J. Davis.)

down as they were driving out. That's the top figures. As to the ones to the left, a little below, I couldn't say when I marked them down. I don't know whether I got them before or afterward. It must have been afterward.

As to how in making up this invoice I happened to note the name on the line where it says "credit line"—That [202] was the name given to me as the dealer. I have no idea which of the men I have looked at here gave me that name. I wouldn't know which one of the two.

As to whether there is any writing on the face of that document that isn't mine—This bottom signature, next to the bottom, is one of the men that bought these tires, and signed this ticket. There is a retail sales tax number on the ticket—No. A 24695. That was placed on there at the time the transaction was being consummated.

### Cross Examination

By Mr. Goodman:

I had been engaged in business as a retail operator of a gasoline station for some time. I held a board of equalization seller's permit at the time of this alleged transaction. I did not call the office of Price Administration before I made the sale, to ascertain how to make the sale. I did not receive any instructions from the Office of Price Administration, or any representative thereof, telling me

(Testimony of William J. Davis.)

how to make a sale of that kind. I had the impression that such a sale was legal between dealers. When I sold these tires to these gentlemen whom I can't identify positively, I was positively of the opinion that I was making a lawful sale under the rules, regulations and directives of the Office of Price Administration. I made a record of the sale. I took the license numbers down in this case because I knew there were some restrictions on sales, so I [203] wanted to make sure it was a dealer. They represented themselves as dealers. They told me where this station was located. The address is on the slip. I didn't check to see if there was such a station there at the time. I don't know whether there was a station at that address or not. I tried to check one of the addresses that had the sale there. I don't know whether this was a dealer or not. When I made the sale I took the pains to insert on the invoice that these tires and tubes were being purchased for the purpose of resale, and I so indicated that on the invoice. That is where I got the number.

I never had any business with Mr. Benjamin Rose, nor Mr. Joseph Lieb, nor Mr. Mac R. Brown, nor Mr. Phil Taplin. In reference to the other two gentlemen; they are similar to the guys, maybe the same, I am not positive.



## LEO ISENHOWER,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

## Direct Examination

By Mr. Norcop:

I am an employee of the California Overall Cleaning Company. I am a laundryman. I run a laundry route. I have been engaged in that occupation since about March, 1942. In my work I use a Chevrolet sedan delivery. It's a laundry truck. As to the persons sitting to your left in the court [204] room—I know only Mr. Rose, he is the gentleman on my far right. I knew him for a short while, but it has been quite a while ago. I saw him several times. I am not personally acquainted with him. I saw him sometime in 1942. I first saw Mr. Rose at one of my laundry stops. It is a service station immediately north of the J. L. Schlosser Company, on Western Avenue. I don't know the name of the service station. It could be Victory Service, but it is definitely on Western Avenue, and immediately north of the J. L. Schlosser Chevrolet agency. The name of the customer there was Fenton, and another man named Willie. Willie was a negro. I go in that station at that time twice a week regularly and pick up laundry. I met Mr. Rose there. I did not have a conversation with him the first time I met him. Probably the second time. There was no one there in the hearing of this conversation besides Mr. Rose and I. There

(Testimony of Leo Isenhower.)

was an office in there where the men came to change clothes, and quite often they did change clothes. It is a small office, and the customer came to pay his bill, and Mr. Rose, I believe, was standing in that office there one time, and the subject of inner tubes was mentioned, and I needed inner tubes for my trucks. I did not know where I could get them. I talked to him about it. I don't know just who said what first, or how, but we did talk about it. I mean Mr. Rose. The sum and substance of the conversation was that he had some inner tubes for sale. I needed them. He said he could sell them to me, and I said I would like to get them, [205] so I made an agreement to buy them from him. There was a statement as to price of around \$4.00 apiece. I did not take delivery of them there. I run a laundry route. I am at certain places at certain times of the day; on different days of the week I am in different territory, and I met him on a different day, a day or two later, it was convenient to him and convenient to me, and I got them at another place. It was near 9th and LaBrea, on a vacant lot, next to a large building. I don't think it is used as a parking lot. It's in a fairly busy part of town. Besides Mr. Rose and I there were passers-by, pedestrians; not directly concerned; no one that I knew. I think he arrived first. There was no one else there besides he and I. He brought along the inner tubes I had agreed to buy from him, and I bought them from him. It seems to me there was five or six; I think there were six boxes of them. I

(Testimony of Leo Isenhower.)

think there were six in a box. That would be 36 inner tubes. I paid him. I can't recall exactly what the price that I paid him was, but it was close to what we had originally agreed on. I actually wanted to get less than 36 inner tubes, and when he got them there, why, he didn't want to keep all of them, and I thought that, rather than not have any, I had better just take them along. I can't remember anything said word for word. The substance, that he just had the merchandise and I wanted it, and I didn't want as much as he had there; but, on the other hand, rather than not to get any, I did need the inner tubes. [206] I generally have some checks in my pocket and I generally have cash in my pocket, and I paid him—it seems to me like I gave him mostly cash. I think there might have been one or two checks. They were not personal checks. I mean by "personal checks" my own checks. I was not a retail tire dealer at that time. I am a laundry man. I did not have any certificates from any rationing board to obtain these tubes. I didn't have any certificates to obtain them with and I didn't feel that I needed them.

### Cross Examination

By Mr. Goodman:

I don't think I was introduced to Mr. Rose at the gasoline station. I didn't know Mr. Rose prior to that time so that I would know him by name and he knew me by name. I first met Mr. Rose at the station where I first met him there. I had not actually formally met him. I just saw him. I was actually



(Testimony of Leo Isenhower.)

formally introduced to him after I got talking to him about the inner tubes, I guess. I wasn't formally introduced. I just got acquainted. I have not related all the conversation on direct examination that took place between Mr. Rose and I before Mr. Rose agreed to sell me the inner tubes.

As to whether I recall telling him that I wanted to buy the tubes for the purpose of resale and that I had a retail sales permit—I don't think it was mentioned. I don't recall saying anything in that reference either yes or no. [207]

As to whether he asked me if I had a retail sales permit—I can't say that he did or can't say that he didn't. I don't think he did. I will tell you this: I didn't tell him that I had one. It is my impression that, to kind of clear the question there up, that the trucks themselves—that I have a truck and my brother also runs a truck, and I was getting the tubes for both trucks; and it was my impression that inner tubes, new inner tubes, were frozen and the only place that a private party could buy them would be to find somebody that had them that he could get them from. I learned different since then, but that was my impression at the time. I felt that I was perfectly O. K. to go ahead and buy the tubes from him, so I never talked about it. I didn't think I was violating any law.

As to whether I tried to give Mr. Rose the impression that I was a dealer—I don't think I tried

(Testimony of Leo Isenhower.)

to imply any impression, other than that I wanted some inner tubes. I don't think I told him that I would subsequently give him the number of my retail sales tax permit. I told him I had several trucks. I probably said that, all right, because I did. I only have two now. I wasn't in the trucking business, though.

As to whether I told Mr. Rose also that I had a lot of business with gasoline service stations and that I was buying tubes for that purpose—I don't recall anything along that line of conversation.

[208]

In reference to this transaction—I was not really contacted by anybody. As I say, I am into this place regularly. It is a small room. I know that there was at least one or two times, prior to making the agreement to buy the inner tubes, that Mr. Rose was there, and I can't recall the exact conversation; but I did get the information that he had some inner tubes for sale. I can't say how or from whom. As to why I bought 36 inner tubes when I had only two trucks—the two trucks using inner tubes, in my experience, that the inner tube is only good for about six months and it will take ten tubes to give an extra set for each one, and at that time I had no idea of how long the war would last. I was for laying in stock. I didn't want to get put out of business. I was going to see that I had a good supply on hand for myself. I don't know that anybody contacted me first to check on this transaction. I was sub-

(Testimony of Leo Isenhower.)

poenaed in Court as a witness. Mr. Foster and Mr. Norcop talked to me before I came here in reference to that subpoena. Mr. Foster contacted me before this trial. That was a week ago Monday. I had seen Mr. Foster several times, but not definitely regarding this trial. I don't know when the first time I contacted Mr. Foster was. I have known him a month *less the* time than I have known Rose. I have known him for about six months. I don't know him in a personal way either. I know who he is. I met Mr. Foster approximately a month after this transaction with Mr. Rose took place. I met him in Santa Monica. I did not have a definite appointment with [209] him. I just happened to run into him. It was at the police department in Santa Monica. I was under suspicion of having stolen property. I was being held. Someone had told them I had some batteries and rubber and so on in my garage, and they thought I had stolen them, but I had bought them. I met Mr. Foster first in Santa Monica, in an office room in the Santa Monica Police Department. At that time I had a conversation with him. I couldn't say whether at that time I told him about the purchase of these tubes. There were several things mentioned. As to whether anything was said about the transaction of the sale of any tubes by Mr. Rose to me—as far as I know there could have been or there could not have been. I next saw Mr. Foster about a week or two weeks later at his office at the Office of Price Administration. He asked me to come down and talk to him about



(Testimony of Leo Isenhower.)

it. It is not a matter that refers to this case in particular. It is a separate transaction. I had a conversation with him at that time. In that conversation I think the question of a sale by Mr. Rose to me was brought up. Mr. Foster started to talk about these tubes first. I didn't have them any more and I was trying to get them back again. Mr. Foster had the information about the tubes prior to asking me about it from other sources. He asked me where I got the tubes. I can't tell you the exact conversation, but the gist of it was that I did get the tubes from Mr. Rose. I had been informed that I had violated [210] the rules and regulations of the Office of Price Administration in that respect before that time. I have been informed of it pretty regular. I haven't been threatened or told that I would have to testify against Mr. Rose. Today I came down here of my own part. I was subpoenaed down, but I am not testifying against Mr. Rose or for Mr. Rose. I am just telling what happened. At no time since the first time I talked to Mr. Foster did he tell me that if I would come up here and testify that they would give me immunity and would not prosecute me. As far as I know, if I have a violation of the Office of Price Administration, at the time I violated them was just like when I bought these tubes. I didn't intentionally do it, but so far as I know, I am being charged with that violation. They have placed something against me. I was in court a week ago Monday, and I am to appear

(Testimony of Leo Isenhower.)

in court again the following Monday. My matter is not yet determined. It is not a fact that that is the reason that I am now testifying that I did not tell Mr. Rose that I was a dealer. It is not a fact that my case was continued until next Monday so that I could come in here and testify today before my case was heard.

Q. By Mr. Goodman: Did you dispose of any of those 36 tubes by sale?

A. I refuse to answer the question, unless I have to.

Mr. Goodman: He has waived his immunity.

Mr. Norcop: If the court please that is not part of [211] the examination of anything that was asked him before on direct and he did not ask to make him his own witness.

Mr. Goodman: That is the entire transaction.

The Court: Just a moment. I am going to sustain the objection. Just remember, gentlemen, that this man is not on trial. The defendants that are named in the indictment are the defendants in this case, so this witness is not on trial.

Mr. Goodman: I want to take an exception, and I also want to make an offer of proof, your Honor.

The Court: You will have to make your offer of proof in the absence of the jury, and make it in the record and exception will be noted. You can make it during the recess.

By the Witness: As to the other defendants in this case—I have looked the gentlemen over here around the table you are sitting at. I have never

(Testimony of Leo Isenhower.)

seen any of them before. I don't think I know any of them. I have never seen any of them. I have never owned or operated a service station either before this transaction or thereafter. I have never operated any place where new tires and tubes were sold either before this transaction or since.

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DAVID M. HOFFMAN,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows: [212]

Direct Examination

By Mr. Norcop:

I am an enforcement attorney employed by the Office of Price Administration. I have been with the Office of Price Administration since the 26th of May of 1942. I met Mr. Rose, I believe, one time to speak to him. That was at the Office of Price Administration, 1033 South Broadway, in the city of Los Angeles, about the latter part of June, I would say around the 23rd or 24th, 1942. There was Mr. Foster, of the Office of Price Administration, and Mr. Storms, of the Office of Price Administration, and myself, and a stenographer of the Office of Price Administration by the name of Miss Viley. This stenographer made notes of the happenings upon my request. I talked with Mr. Rose upon that occasion. I can't remember all of it. I could possibly remember a great por-



(Testimony of David M. Hoffman.)

tion of it if I could refer to the statement that was made up on that occasion. (The witness did not refer to the statement.) Mr. Rose came into the office with Mr. Foster and Mr. Storms and I was called, and we went into one of the offices and sat down and I proceeded, first, to talk to Mr. Storms and Mr. Foster, in the presence of Mr. Rose, and at that time Mr. Foster and Mr. Rose—Mr. Storms informed me that Mr. Storms had been down to Mr. Rose's service station located, I believe, on the corner of Olympic and Hill, and had had a conversation with Mr. Rose in which Mr. Rose had offered to sell Mr. Storms four new tires for, I believe, a price of \$175.00, and had [213] offered also to sell Mr. Storms some re-treaded tires for, I believe, \$16.00 or \$17.00 each.

I then asked Mr. Rose if he was the owner and operator of this service station; and he said, "I refuse to answer." I said, "You have heard Mr. Storms recite what he just told me. Did that take place?" He said, "I refuse to answer." I asked him if he knew—if he operated a parking lot known as the Capital Parking Lot, or Capital Auto Parks, to which he replied, "There are many Capital Auto Parks."

Well, I said, "I am speaking of the Capital Auto Park mentioned by Mr. Storms, located on 6th Street, I believe." He said, "I refuse to answer." I asked him if he sold tires at his service station at the corner of Olympic and Hill;

(Testimony of David M. Hoffman.)

and he said, "All service stations sell tires." I asked him if he sold new tires. He said, "I refuse to answer." I asked him if he sold used tires. He said, "Yes, we sell used tires." I said, "Where do you sell used tires?" He said, "My brother runs the parking lot on 6th Street." I said, "Is that the Capital Auto Parks that I asked you about before?" He said, "Yes." I said, "Does your brother run that place?" He said, "Yes; but I have the license." I said, "You also have the license for the Shell Auto Park"—I believe that was the name of it—"on the corner of Olympic and Hill?" He said, "Yes." I said, "Now, did you offer to sell Inspector Storms some new tires for \$175, as he states?" He said, "I never saw Inspector Storms before [214] in my life." I said, "You mean you did not see him before you came right here in this room?" He says, "I have never seen him before in my life." I said, "You know Inspector Foster, this gentleman here?" He said, "I never saw Inspector Foster before in my life." I said, "Mr. Storms, will you repeat again what you told me again about the transaction of purchasing or being offered some tires?" At which time, as I recall, Mr. Storms again went through and repeated that he had gone into this parking lot, after being at the Capital Auto Parks first, and there being interviewed by an attendant, then from there he had gone over to the station at Olympic and Hill and had met Mr. Rose, and that Mr. Rose at that time had of-

(Testimony of David M. Hoffman.)

ferred to sell him the four new tires for \$175 and the retreaded tires for about \$16 each.

I said, "Did he ask you or did you offer to state that you had any rationing certificate?" Mr. Storms said, "No." I then said to Mr. Rose, again, "Mr. Rose, did you offer to sell these new tires or retreaded tires to Mr. Storms?" He said, "I never saw Mr. Storms before in my life." To the best of my recollection, I then asked Mr. Rose how long he had been in the gasoline business. I fail to recall how long he said. I asked him if he had sold tires in the past and he said he had. I asked him if he sold tires without rationing certificates, and he said, "You can't sell tires without rationing certificates." I said, "Did you sell tires without rationing certificates?" He said, "I refuse [215] to answer."

And generally, from that point on Mr. Rose stated that he would refuse to answer any further questions. At the conclusion, I said, "Would you like to have counsel?" He said, "Yes." I said, "Very well; you can have counsel. Would you like to come back with your counsel on this matter?" He said, "I don't think I have to come back at all." I said, "Very well." At which time we concluded our conversation. That is the substance, as I can recall it, to the best of my ability at this time.

The young lady was not present during the first portion of the conversation. I then asked Mr. Rose, I recall now, if he had any objections to my hav-



(Testimony of David M. Hoffman.)

ing a stenographer come in and take the substance of the testimony; to which he replied, "No." So we called Miss Viley in and she proceeded to write down in shorthand. As to whether she went out of the room and then returned while Mr. Rose was still there—I believe she remained in the room. I know that she went out to transcribe her notes, but whether anything was said about returning I can't recall. I believe she came back while Mr. Rose was still there. I don't believe any transcription that she may have made was shown to Mr. Rose, although I can't recall definitely unless I were able to observe the transcription.

#### Cross Examination

By Mr. Goodman: [216]

I am an attorney-at-law. While I was in this office I had sitting next to me Mr. Foster, an investigator of the Office of Price Administration. I also had a stenographer from the Office of Price Administration. There were also there from the Office of Price Administration myself and Mr. Storms. I did not bring Mr. Rose. I did not request him to come at all. He came in with Mr. Foster and Mr. Storms. He came in with Mr. Foster. Whether it was at his request—I don't know—I was not there.

I believe that there was a statement to the effect that Mr. Foster had asked him to come down to the office.

As to whether the purpose at that time of my

(Testimony of David M. Hoffman.)

examination of Mr. Rose was to get him to make admissions or statements which I could subsequently use for the purpose of bringing a criminal proceeding against him— The purpose of that interview was to find out what Mr. Rose and Mr. Storms had to say about this matter. I didn't know. As to whether if Mr. Rose had said, "Yes; I have sold these tires," I would have brought criminal proceedings; whether that was the purpose of it— Not not necessarily. You can't convict him with his own statement. That was not the purpose of the hearings over there, to get these persons to come in there and to make admissions, and then to use the admissions against them.

The purposes of those hearings are to interview parties to find out what they have got to say about a transaction, not to obtain admissions. If, incidental to the interview [217] it happens to be that the man admits that, that is one of the things that takes place; yes.

I did not tell him at the commencement of the conference that any statements he might make in that office there would not be used against him and that I would give him immunity. I did not tell him that he had a right to have a lawyer until the conclusion of the conference. I didn't tell him that because I didn't know that there was anything involved in the matter until after Mr. Storms had recited the story. I did not tell him that he was entitled to a lawyer until the conclusion of the conference, after I had interrogated him on all

(Testimony of David M. Hoffman.)

these various questions and he refused to answer them.

When I found out as to Mr. Rose's position, I told him that he was entitled to a lawyer if he wanted. I have been a prosecutor for many years. Mr. Storms did not state there at any time at that conference that he had ever bought any new tires or tubes from Mr. Rose. Mr. Rose never admitted that he had either made a sale of new tires or tubes, or even offered to sell to Mr. Storms or anybody else. As to why, when I found out that no sale had been made, after talking to Mr. Storms, of any new tires and tubes, I continued cross-examining Mr. Rose, when I found no violations— As I was saying, I was not trying to force something down Mr. Rose's throat. I wanted him to tell me what he had to say. I wanted to find out what his position was and what he had to say about the matter, not to find out if he was guilty or innocent, [218] but to find out what he had to say.

As to the purpose of finding out what he had to say, when I found that no violation had been committed because there was merely an asking to sell and no sale—Mr. Storms had told me, in the presence of Mr. Rose, that Mr. Rose had offered to sell him tires, new tires, without certificates. That is a violation of the rationing law. I knew Mr. Storms before.

As to whether I had reason to believe him, more so than I believed Mr. Rose at that particular time



(Testimony of David M. Hoffman.)

—With the exception that I know Mr. Storms had worked with him. I did not know Mr. Rose at all. Mr. Storms was an OPA representative. He was not sent out by the Office of Price Administration to induce Mr. Rose to make a sale to him. He was sent out to investigate a complaint that had been received that Mr. Rose was selling tires, without certificates, for prices over the ceiling.

As to whether at that time Mr. Rose offered to sell Mr. Storms tires— That is what Mr. Storms told me, and in the presence of Mr. Rose. I don't know whether he did or not. I wasn't there. I don't know what took place when Mr. Storms was out with Mr. Rose. The first time I saw Mr. Rose was when he was in the office in the company with Mr. Foster and Mr. Storms. He was not handcuffed, he was not being held, he was merely there. Mr. Storms was not instructed by either me or anybody else in that office, to my knowledge, to go [219] out and to encourage retail gasoline station owners and proprietors in attempts to make sales to them so that they could get evidence on them. That was not the case here with Mr. Storms, to my knowledge. I don't know anything outside of my own knowledge. Mr. Storms is an investigator in the investigation department and I am enforcement attorney in the enforcement department.

As to whether at the conclusion of that conference I transcribed those notes and gave Mr. Rose a copy—I can't recall whether he was given a copy.

(Testimony of David M. Hoffman.)

It was taken down in shorthand. It would take some time to transcribe it. I recall, however, that Mr. Rose did not leave after my conference was terminated with him. He remained, I believe, with Mr. Foster for some time. I don't know how long.

(In Judge's chambers. Present: The Court; and Messrs. Norcop, Sullivan and Goodman.)

Mr. Goodman: My offer of proof is to prove by the witness Eisenhower that after he bought these tubes, he sold them to divers persons at a profit.

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JOHN FOSTER,

recalled.

Direct Examination—(Continued)

By Mr. Norcop:

Referring to the 23rd or 24th of June, 1942, I was present on the occasion that Mr. Hoffman mentioned. There was present Investigator Storms, and the young lady who was taking down the dictation, and Mr. Rose, Mr. Hoffman and myself. [220]

As to whether I had any conversation with Mr. Rose before Mr. Hoffman met him—I had a brief conversation with Mr. Rose. I merely went in, with Mr. Storms, in to Mr. Rose's place of business, at Olympic and Hill, and asked Mr. Rose if he would get in the car and go over to the Office of Price Administration with us, which he did. Just we three. Nothing took place before Mr. Hoffman met Mr. Rose, or until we went into the office, and

(Testimony of John Foster.)

asked Mr. Hoffman if he would come into the office with us, and we went into another little adjoining room there, where Mr. Rose was seated, and we discussed the situation with Mr. Hoffman, and gave him the details of what had previously happened. That was in Mr. Rose's presence.

As to the substance of what was said and done when Mr. Hoffman was present and Mr. Rose was present—We told him that Mr. Storms had contacted Mr. Rose; Mr. Rose had made an offer to sell him some tires, and that I was standing across the street at the time, and that Mr. Rose was going to go in Mr. Storms' car with him to pick up these tires, and that Mr. Rose's father had seen me, and run over and whistled to Ben, called him back, and they backed up the car, and Mr. Rose looked and saw me, and went back over, and talked to Mr. Storms, and Mr. Storms drove out, and came to me, and told me they had refused to sell him. That was said in Mr. Rose's presence. We then gave Mr. Hoffman an understanding of what had happened. After that Mr. Storms and I [221] went in and asked Mr. Rose to go to our office, where he was introduced to Mr. Hoffman. We said that in front of Mr. Rose. Mr. Hoffman did the examining, to the best of my recollection; asked most of the questions. I think there were a couple of questions that I asked, but the majority of them were by Mr. Hoffman. After this statement had been taken from Mr. Rose, Mr. Rose told me that he would like to speak to me alone. I followed him



(Testimony of John Foster.)

outside. No one else went with me. We went out in the highway, toward the front door of 1033 South Broadway, where we stood. Mr. Rose asked me if I remembered seeing him any place, and I told him I didn't believe I did. He said "I know you. I have seen you up at Louis Vitagliano's, on his lot." I said, "What were you doing up there?" He said, "What do you think?" I asked Ben at that time to tell me, I said, "Why don't you come across and tell me what you know about this deal? It is going to make it a lot easier if you tell us all you know about these things, and let us get it over with." He said, "I don't think I can, as long as there is anyone writing down what I say." He asked me if I knew Les Carston, and I said I did not. He asked me if I knew Sam Weinstein, and I said I did. He said, "I know all of those boys too." I believe that was about the extent of the conversation on that date. And Mr. Rose asked me if the government was going to take him to lunch, and that ended it. That was the first time I had met Mr. Rose. I next met him two or three weeks after that date at his service station at 955 South Hill Street. I had a conversation with him. [222] No one was present but Ben Rose and myself. I went in to talk to Ben regarding another tire movement. I asked him if he knew anything about it, and he said he possibly did, but he didn't care to discuss it. So he said, "Jack", he said, "You are on the wrong side of this thing. Why don't you get wise of yourself, and get in on the right side?"

(Testimony of John Foster.)

There is some money to be made.” So I told him I wan’t interested. He said, “Well, I know where there can be a few thousand dollars picked up if you just lay off. I know one thousand you would get right away, and I know several others that you can get, and I would be glad to take care of it for you.” I told him I wasn’t interested in that at all; that I had a job to do, and I was trying to do it. About that time some fellow went by whom he knew—who Ben knew was in the tire business, those we had some trouble with, and he asked me if I saw Shorty go by, and I said yes. He said, “You had better get out of here.” I said “Why?” He said, “Those fellows don’t like to see you in here. They are liable to come back. I have gotten in trouble with them already, because they have seen me with you. If they see you in here a lot, they might think I am telling you a lot of things I shouldn’t.” Shorty is Shorty Herman Hoffman. Nobody concerned with this case. That was all that took place on that date. I believe the next time I saw Ben was when he came in to Mr. Dundas’ office. I believe Mr. Earnest was present also at that time, and if I recall, that was about the middle of July. This [223] was at 1037 South Broadway, in Mr. Dundas’ office. In the Office of Price Administration. There was a conversation then. Rose made—I don’t recall his exact words, but he said he knew he was in trouble, and he had been thinking it over, and he was just wondering how he could get out. He said, “I am willing to spend

(Testimony of John Foster.)

\$500, or whatever it is, to get out of this, and get clean and straight again." I don't recall who said it, whether Mr. Dundas or myself said it—we did not know how deep he was involved at that time, and we would like to have him tell us just how deep he was involved; what he had done. He said, "Have you ever been threatened?" We said no we had not. He said, "I have." He said, "Some of these boys I have been dealing with came around, and put a gun, laid a gun on the counter here, and said to me: 'You see this? You wouldn't want to be found lying around the road some place, would you?' " They asked him, "Do you know what that is?" He said, "Yes, it's a gun." And they said, "You wouldn't want it used, or anything, would you?" He said no. They said, "Just remember; you don't know anything when somebody comes around to ask you—" He said that in the presence of Mr. Dundas, and I believe Mr. Earnest was present. I was present, and Mr. Rose made the statement. That was the substance of it, only he said he couldn't tell us any more. We told him, so far as we were concerned we did not know just how deep he was in the thing, and if he wouldn't tell us we would have to continue [224] with our investigation. I believe that was about all; and at that time Mr. Rose shook hands with all of us, and left. I next saw Mr. Rose, I believe right after he bought the tires from Mr. Mike Kreling. I saw him at that time at his service station at 955 South Hill. It was possibly about a week afterward. I



(Testimony of John Foster.)

believe it was in the latter part of July. I was alone, and Mr. Rose was alone. I had a conversation. I asked Mr. Rose if he had purchased some tires from Mr. Kreling. He told me he had. I asked him where they were. He said he had them over in his garage. I asked him if it would be possible for me to see the tires and check them. He said that would be O. K.; he would be glad for me to see them, so I made an appointment with him—I forget when it was; within a day or two, and he was going to let me see these tires and tubes. However, he did not keep the appointment; and the next time I saw him was about August 10th or 12th, I believe, when I had learned that some tires had been sold to Benjamin Rose by Sam Kelber. I saw Mr. Rose in the parking lot that he ran, just off of the service station in the first block south of his service station on Hill Street; on the same side of the street, which would be the west side. No one was there but Mr. Rose and myself. I talked with him then. I asked him what he had done with these tires, and told him it would be absolutely necessary for me to see those tires. He told me he had them; he wouldn't let me see them until the first of the next month. [225] I told him I couldn't wait that long; I would have to see the tires. He said, "Well, if that's the case, why, you had better not do any more talking with me. I guess you had better see my attorney". I said, "Does he have invoices, or anything showing what happened to the tires?" He said, "No, he doesn't, but he should

(Testimony of John Foster.)

have, by the time you talk with him." He told me the name of his counsel. He gave me Mr. Benjamin Goodman's name and address. That was the substance of the conversation. The next time I saw Mr. Rose was, I believe, September 19, 1942. At, I believe, 613 North Virgil Avenue, Los Angeles. I was looking for a warehouse full of tires that there had been some rumor regarding. I was walking north on Virgil, right in front of 611, which was an empty grocery store building, and I saw Mr. Rose pull up to the lot right ahead of me. There was a service station lot, three or four pumps in the service station, and there was a building. It was on the west side of the street. He was coming south. I was walking north. He pulled up just as I crossed over the sidewalk. I was probably 30 or 40 feet from there. He saw me, and he just kept on going. At that time Mr. Rose was in his garage, in his car. There was a window, and as I looked through the window he saw me, and came back around, and stepped right in front of me. Mr. Harwood was with me at that time, an investigator with the Office of Price Administration. Mr. Rose asked me what I was doing there. I told him I was just out in that neighborhood, walking [226] around. I asked the same thing. He said that was what he was doing, but he had seen me, and he just stopped to say hello. We passed the time of day there on that occasion. Again he made the statement to me that he thought I was on the wrong side of this, and asked me if I was still

(Testimony of John Foster.)

fooling around with the OPA. I said I was. He said, "Well, you are still on the wrong side. I think you are dealing with some pretty tough boys. You are liable to get hurt." I told him I would take that chance. He said so long, and started his car, and left. Then I went to the rear of this particular building we were standing on the side of. I saw the windows were all covered over with cardboard, and I couldn't see in it. There was a little glass broken in the back of this, and there was a piece of tarpulin hanging over it, and it was hooked on both sides. In order to see in, I tore a hole in the tarpaulin, and looked in there. This place was, I would say, about a quarter filled with new tires and new tubes, and I then called our office, and got hold of Mr. Dundas, and advised him of that. I later saw Mr. Rose again. I think the same afternoon, at the same spot. Mr. Dundas was there; Mr. Earnest was there; Officer Doane left at the same time that I came on the scene. Officer Hamilton was there, and Ben Rose, and myself. Mr. Hamilton asked Mr. Rose if that was his tires in his place, and Mr. Rose stated that they were not. He asked him who they belonged to. He said he had sold them. He asked him to whom he had sold them. [227] He said that there were invoices to show that. He asked him if he had a key to the place. He said he did not. He asked him who had the key. He said the man he sold the tires to. He asked him if he rented this place. He said he



(Testimony of John Foster.)

did not; he did not know anything about it. Officer Hamilton asked him if he had a duplicate key. He said he might have one at home. He said "Well, let's go over there and see." So we started out, and Mr. Hamilton stopped and went over and talked to Mr. Dundas and Mr. Earnest. He came back, and put the handcuffs on Mr. Rose, reached in his pocket, and there was a chain hanging out of his pocket, and he pulled the chain out of his pocket, and said, "I want to see if these keys fit the door." He went back, and the first key he tried opened the door. He shoved Mr. Rose in. He said, "I thought you did not have a key." Rose did not say anything. We told Rose that we wanted to inventory the tires, and we proceeded to do so. By that time I believe Mr. Dundas had gone, and just Mr. Earnest, myself, and Officer Hamilton and Rose were present. We proceeded to take an inventory of the tires. There were exactly nine tires totally unwrapped, and we made a statement before Mr. Rose that we were getting the serial numbers, but decided not to, because there were so many wrappings on the floor, we did not want to unwrap any tires, so we didn't touch any tire that had a wrapper on it, other than counted it as a tire, and found out what kind it was. Nine tires were totally unwrapped. Officer Hamilton stated [228] that those were the only ones that would be likely to be stolen. They had quite a few burglaries around stations in that neighborhood, and he advised Mr. Rose that he

(Testimony of John Foster.)

would take those in, and run those, to see if they had been, stolen or reported as stolen.

I believe at that time Officer Hamilton and Benjamin Rose left, and I called a commercial photographer, who has testified here, and had him come over and take pictures of the interior of the building.

It was necessary to take more than one picture, because you couldn't get all the tires in one. He had to take one from one corner, and take the other one from the other corner.

As to whether there was any electric light in that room—There was an electric light in—there were connections in, but they were not turned on, so there was a lantern there, one of these upright flashlights—I guess you would call it a flashlight; more or less of the lantern type. We asked Ben if that was his. He said, "Yes. How are you going to see in the dark if you don't have a light?" We saw him again on that day. We counted the tires. I have a list of those. I believe there were 67, other than the nine, and if I recall correctly, there were 431 new tubes.

We had the photographer stay there with us to see that the door was locked, so that everything would be accounted for. Mr. Earnest and I left when the photographer left. We then proceeded to the Wilshire police station, and we [229] got over there and we met Benjamin Rose coming out. Ben's car was left over at 613, I believe it is, North Virgil, and he did not know how he was going to

(Testimony of John Foster.)

get back over there. Mr. Earnest and I had one more call to make. We told him if he would come with us we would probably be about ten minutes on the other call, and we would take him back to the spot. We went to the other place, and no one was home at the place, and we left. We weren't that long. So we took him back to his car. That was the last I saw of Ben on that occasion. I believe the next time I saw Ben to talk to him was on the occasion over at his other warehouse, or at another warehouse that he had rented on Sunset Boulevard. No one else was present. Just Mr. Rose and myself. That was on October 13th about 9:00 to 9:30 A.M. I had a conversation with Mr. Rose. I happened to be seated going down the street, and I saw Ben go into this driveway where the tires were. I waited for some time and then walked in. I believe I left my car outside, and I walked in. Mr. Rose was busy. He had a cream colored Oldsmobile; it had quite a large trunk over its rear, and the trunk was up. As I walked in, the rear had been filled with tires, and he had shoved some tubes in the side. He was covering them over with a blanket before letting the back of the car back down. I spoke to him. I got probably 20 feet from him before he saw me. I said, "Hello, Ben." He turned around, and he made the statement, he said, "Can't I do anything without you being on my trail?" [230]

I said, "I wasn't exactly on your trail. I have been here for some time."



(Testimony of John Foster.)

The door was open to this warehouse. He started to close it. I asked him if he would let me look in. He said he might as well. I looked in, I believe I counted 8 tires left of a large size, and close to 100 or over, new tubes, and the place was in the same condition as the other place and been on the day that we found it. In the center of the room were numerous wrappings of tires, and a large number of empty tube boxes. I made the statement that he had gotten rid of quite a few tires out of there recently. He asked me how I knew it. I told him I knew how many he put in there. He said, "You know where these came from, don't you?"

I said, "Yes."

He said, "Those are part of the tires I had in the Virgil Street warehouse. I split them up over there, and brought half over here." I said I knew that wasn't so. He said, "Are you going to fellow me on this delivery?" I said, "No, Ben, I don't think I will, but there's another boy down the street who probably will."

Then I remarked to Ben regarding his tracks. I said, "Ben, I wish you would get some different kind of tires on that car, because they are a sure give-away." I showed him the tracks that had been in there several times. I said, "Indirectly, did you make a good deal Saturday night?" He said, "Did you see me in here Saturday night?" I really did not [231] see him, but I told him I had. I told Mr. Rose that. I told him he was the last. I told him I was there the night before and had

(Testimony of John Foster.)

seen him, but I did call his attention to his tracks being in there, and even pointed at them while he was there. I don't believe he replied to that. I think he just laughed, and got into his car, and left. Only he locked up the door of his warehouse.

I don't recall just the date that I saw Mr. Rose on the next occasion. I do not know where it was. I believe it was when he came into the office. That was after the indictment was filed. I saw him one time right after that in a car with Mr. Ray Paddock, who was a witness here this morning, but I did not talk to him. I saw Mr. Rose after the indictment, though, in our office. He came in and talked to me. I first met Mr. Vitagliano, I believe on May 26th, 1942, at 12th and Stanford Place, Los Angeles, on the East Side. Mr. William Fitzner was with me, and there was no one at the time other than Mr. Fitzner and myself and Mr. Vitagliano. Conversation occurred.

We went to this premise, after receiving a call that there were two van loads of tires there. We drove in and went on back to this steel covered shed where these two vans were, and were looking around the vans, and Mr. Vitagliano came back and asked us what we wanted. We introduced ourselves as investigators from the Office of Price Administration. He asked us what we still wanted, that he did not see [232] any connection. We told him we wanted to know where the tires had come from. He informed us that he had already straightened that out with the police officers. We told him we would have

(Testimony of John Foster.)

to know also. He said, "Well, the tires don't belong to me, so there isn't must information I can give you." He said the police had broken his locks off. We told him that was a matter with the police department; that we had nothing whatsoever to do with it. He stated that the tires belonged to a friend of his by the name of Mr. Phil Taplin, and that Mr. Taplin had the invoices to show for it. And we asked him to get hold of Mr. Taplin for us. He said he would. So he went in and called for Mr. Taplin, and we had some other conversation with Vitagliano regarding what part he had played with the tires. He said he had no part whatsoever; that he was a friend of Mr. Taplin, and he was merely doing him a favor by letting him put trucks there, leave trucks there until he could find some storage space for them.

I am not sure whether Mr. Taplin came while we were there, or whether we left, and came back, but it was the same day we came back and saw Mr. Taplin. At that time we looked at the invoices.

I believe Mr. Vitagliano got the invoices, and handed them to us. I could be wrong in that; either he or Mr. Taplin. We scrutinized the invoices, and saw that they had come from the Perfect Made Tire Company, and asked Mr. Taplin what he [233] intended to do with the tires. He said he was buying up tires. He thought there would be a demand for them after the war. He had some money to spend, and he thought he would



(Testimony of John Foster.)

put in in tires, and just hold them until after the war, and he figures there would be quite an increase and demand for rubber tires, and he would make money on them.

We asked him, in that event why he did not get them in a bonded storage house. He said, well, he would, if he could find one. Mr. Fitzer told him that he knew a Bekin's warehouse, at Alameda, near Fourth, and they said that they would go over there.

We left and went over to Mr. Novisoff's. Later on in the day we came back by there around noon, and the trucks were gone. We proceeded toward the Bekins warehouse, and pulled up. We saw the trucks there, and saw Mr. Taplin and Mr. Vitagliano coming out of the office of the Bekins Storage Company, down the street. "We" are—Mr. Fitzer and myself. After they came out, and talked for a few minutes, and then got in the automobile and left, and at that point I went in to Bekins Warehouse. I stayed there all the rest of the day, with Mr. Fitzer, and that night around 5:00 o'clock or just a little after, they drove up. "They" are Mr. Vitagliano and two men, and I did not know anyone else that was with them at that time. The two men jumped in the car, jumped in these vans, and started away. Someone started up the car, and drove the car. One of the vans turned around, [234] and started away. We waited until the second one did. They kind of split up.

(Testimony of John Foster.)

We followed one of the vans up to 92nd and Crocker, where he went in to the Market Garage there, a little yellow garage, and they came out and left. They probably weren't in there more than 15 minutes.

After the trucks got in there I went on down and saw the trucks were backed up against the wall in there. I am not sure whether that night I watched all night or not, but I know we did call on the police department, and the police department and myself split up the time. I was relieving them around 3:00 in the morning, and they relieved me about 6:00 at night.

I watched there, I believe it was Tuesday, Wednesday, and Thursday, and Thursday about 11:00 o'clock a man whom I did not know before, but I found he was a new investigator—I just heard incidentally that every morning, and sometimes oftener in the day Mr. Vitagliano would come by in his car, and he would go by and look in the garage, and then would come my where I was. I left there on Thursday around 1:30 or 2:00 o'clock, and this man came over and relieved me. Shortly after that, probably at 3:30 or 4:00, we got a phone call from this other man that the trucks had moved, and they were now out at Wabash and City Terrace where it turns off, and Mr. Fitzer and myself were both in the office at that time, and we got in my car, and drove to this address, and [235] relieved this other man; told him to go back; and we sat there for an hour and a half or two hours, down the street, and

(Testimony of John Foster.)

then they pulled one van out while we were there, and drove the other one in. It was parked down the street a quarter of a block to a half a block.

They drove the other one past it; drove the other, and backed into the place. This was also behind a service station, and had big iron solid black doors. You can't see into the garage. They backed the truck in as far as it would go. My recollection is that it wouldn't go all the way in, but they had it well in, and pulled the doors by the car as far as they would go, so when we tried to get in we had to go underneath the truck, and go in. Mr. Fitzer and I walked in. Mr. Vitagliano, Mr. Taplin, and Mr. Weinstein were in there. They had just finished unloading these tires, and were stacking them up in this storeroom.

We had some conversation with them. I think the first thing they said "Well, it's a cinch we won't lose these tires. We are getting plenty of protection," and asked us why we didn't come a little earlier, so that we could help them unload. We told them all we wanted to know was where the tires were going. I don't believe there was much said other than we would send someone out to take an inventory of these tires, because we wanted to check and see if the amount of tires were still there that they had purchased.

Mr. Vitagliano followed me out, and said to me, "I hope [236] you don't worry about these tires, because Mr. Taplin is a fine boy. He won't do any-



(Testimony of John Foster.)

thing wrong. Don't worry about them, because they are in safe hands." Subsequently we did ask Mr. Taplin to come to the Office of Price Administration.

I believe that was all that happened at City Terrace. We got in our car and left. To the best of my recollection, I saw Mr. Vitagliano about June 3rd or 4th, a very few days afterwards. I had a conversation with him then, at Twelfth and Stanford. Mr. Fitzner was also there. It was regarding some other transaction.

The next time I saw him in reference to this case was probably in July at his service station on Twelfth and Stanford. Mr. Earnest was with me. There were none of his employees that were present. They were around the service station, but they weren't in hearing of us. We asked Mr. Vitagliano if he knew Mr. P. R. Brown, and he stated he did not. We asked him if he had bought any United States batteries, and he stated he had. We asked him where he bought those. He said from some fellow over on Temple Street. We asked him if he knew that was P. R. Brown. He said he did not know, but it was at 1019 West Temple. We asked him if he had used the name of Eazio, over at this place, in doing this. He said he had not. We asked him if he had gone with Mr. Ulrich over there. He stated he believed he had been introduced by Mr. Ulrich to this gentleman, but did not recall exactly what his name was. We asked him on that occasion

(Testimony of John Foster.)

if he had [237] taken the invoice with him after he had bought the batteries, and he said he certainly had not.

Mr. Angelillo: If your Honor please, I don't think this is germane. It has something to do with batteries.

The Court: I have been waiting.

Mr. Angelillo: We object to it upon the ground that it is immaterial.

(By the Witness:)

What I have just now been relating has a connection with this document.—Exhibit 30 for identification. I have seen that before. I saw it a few days before I went into Mr. Vitagliano's place of business to inquire whether or not he had been to Mr. P. R. Brown's place of business at 1019 West Temple Street.

Referring to the symbols or numbers at the top of this invoice, Exhibit No. 30 for identification; I made an investigation of the number at the top with the Department of Motor Vehicles. I found it was registered to Mr. Louis Vitagliano's sister, and it was the license number of the Chevrolet pick-up truck that was being used by Mr. Vitagliano, which was always on his lot. I saw it there myself. Car No. TOZ143 was a Ford coupe. We had some little time getting that, because it was in transit. It had belonged to Mr. Louis Vitagliano. He had sold it to Mr. George E. Wolfe, who was one of the employees of his. I did not discuss these license

(Testimony of John Foster.)

numbers with Mr. Vitagliano. I did not discuss [238] with Mr. Vitagliano, in connection with this transaction, whether he had been to 1019 West 53rd Street. I went to 1019 West 53rd Street, and found there was nothing there.

Mr. Norcop: We now offer this exhibit in evidence, if your Honor please.

Mr. Angelillo: If your Honor please, we object to it, particularly for the reason that most of it is hearsay, and further, the testimony of the witness does not correspond with the testimony of the witness who produced it in court this morning, or who identified it. The word "International" is written on it, indicating International truck. He testified apparently, from some investigation, which we do not know anything about, and the records of the Motor Vehicle Department would be the best evidence concerning the Chevrolet truck. Obviously, the Chevrolet and the International are not one and the same person, and there is no identification or connection shown so far that the defendant Vitagliano is connected with this Exhibit No. 29.

The Court: I was trying to think of the testimony of that witness. The witness identified one defendant, did he not?

Mr. Angelillo: Yes, he did identify Vitagliano. He was not sure about it, however, and one other defendant; I don't know which one it was.

The Witness: Mr. Weinstein.

Mr. Norcop: In that connection, I think I am correct [239] in recalling that the witness said he took these numbers down and placed them on there



(Testimony of John Foster.)

as one of these vehicles was departing from his station. The other one, I think he had gotten sooner.

The Court: I think it is admissible. The weight will be a question with the jury. I will admit it.

(The document referred to was received in evidence and marked Government's Exhibit No. 30.)

(By the Witness:)

At that time I believe that was all the investigation we had regarding that. We did make a trip back a few days later, and at that time I was also accompanied with Mr. Earnest, and we talked to Mr. Vitagliano at his service station at Twelfth and Stanford, right in front of it, and, as I recall, I asked Mr. Vitagliano something about his brother Tony, who is known as Tony Vit.

On that day he more or less blew up. We had a few words, which were quieted down in a very short time, and we went in the coffee shop, or a little restaurant, which was on the same lot, and Mr. Vitagliano apologized for blowing up, and told us he had a letter from Mr. D'Orr stating he could sell tires. He showed it to us. It seemed as though he had a few change-overs. He told me he had a few change-overs, and he figured they were used tires, and he wrote to Mr. D'Orr, and ask him if he could sell these, and Mr. D'Orr had answered that he could sell them if they were used [240] tires. That was all of the conversation, other than he said he hadn't sold any more tires. I think I was in

(Testimony of John Foster.)

there again. This time I was by myself. Mr. Vitagliano was there. I cannot give you any approximation of the date. It was just prior to the indictment, I believe. Mr. Weinstein in one of the truck had quite a few used tires on it. Mr. Weinstein told me he was in the tire business for himself, in the used tire business. Mr. Vitagliano went over to my car with me—I told him we had quite a bit of evidence that he was selling some tires to some squeegee place; and to the Gloege Coffee Company, and to some of the employees down at Bullock's or the Broadway, and he stated he had not since the freeze. He says, "Well, I will tell you; I have been implicated in a couple of loads of tires, but this you are not going to be able to implicate me in." So he laughed, kind of. I left. I believe that's the last time I had a conversation with Mr. Vitagliano regarding anything.

I met Mr. Taplin on May 26th, the same date I met Mr. Vitagliano. I have already told you what Mr. Taplin said to me down at Twelfth and Stanford. I had a conversation out at City Terrace. I have already related that conversation. Other than that, I have had some other conversation with Mr. Taplin I haven't mentioned. I went to Mr. Taplin's place of business about the middle of June. I believe I had another conversation after that, in the office. I was present at a conversation with Mr. Taplin about May 28th or 29th. [241] I am not sure. That was in substance what Mr. Dundas told about, when Mr. Taplin voluntarily gave a letter. I saw

(Testimony of John Foster.)

Mr. Taplin on more occasions than that. I saw Mr. Taplin a few days after he was in the office. He was going to find out for me, if he could, what happened to the 28 tires that were missing. I went out to see if he had. I saw him at his place of business. I believe it is 4441 Malabar Street. Mr. Earnest and myself were present. I had a conversation with Mr. Taplin. I asked him if he had found out anything about the tires and he told me that he believed that he had been shorted those tires; that they couldn't have gotten off unless the police stole them. I saw him several times but it was not pertaining to this case. I have talked with him with relation to his case, other than what I have related today or the other day. I saw him again either the last part of September or the first or second or third of October. I believe it is October 5th that I saw him, and at his place of business again. Mr. Earnest was with me on that occasion. I had a talk with him. I asked him for the invoices that I had talked to him on the telephone about. He had them ready for me and handed them to me, I looked them over. He had one invoice showing the sale, and three or four sheets showing the makes of the tires and all where he had sold these tires to Sammy Rappan, or Rappan Service, rather, signed by Mac R. Brown. On that occasion I asked Mr. Taplin how he come to sell the tires if Mr. Vitagliano and Mr. Weinstein [242] had sold them also, and he said they didn't own them, any part of them. I said "I thought you told me that



(Testimony of John Foster.)

in the presence of Mr. Dundas and Mr. Earnest, that these tires were only a third yours." And he said, "Oh, I paid them off a long time ago. They belong to me." I don't recall the amount of money that was there, but I asked him if Mr. Ben Rose had anything to do with those at all. He said, "Let them speak for themselves." He said, "I sold them to Mac R. Brown and that is his signature." I said, "Well, how did he pay you?" He says, "Cash." I said, "What did you do with the money?" And he said, "What do you usually do with money? I put it in the bank." And with that I got back in the car and we drove away." I believe that is the last time I talked to Mr. Taplin with reference to any matters that we have discussed here in this case.

I first met Sam Weinstein around May the 29th, and it was at 3200 City Terrace, while they were unloading the tires. I had no conversation with him at that time. I met him and that was all. I believe the next time I saw Sam Weinstein to talk to was at his service station on Riverside Drive and, I believe, Victory Boulevard, where they come to a point in Burbank. That was September, around the 12th or 14th. Before I saw Mr. Weinstein on the occasion just referred to, I had seen Mr. Brown. I saw him two days prior at 2824 Sunset Boulevard, in a Signal Oil Service Station. I had a conversation there with him. Donald Harwood was [243] present. I was alone. I believe it was on the next day that I asked him if he knew Mr. Weinstein and he said he did not. I showed him a card that

(Testimony of John Foster.)

I had picked up in his service station with Mr. Weinstein's name in one corner and Mr. Mac R. Brown's on the other, and he said, "Well, I know him, but I am not proud of it." I said, "What is the matter?" He said, "Well, we don't speak." He said, "We don't get along." And he says, "I don't have anything to do with him." I said, "When is the last time you ever saw Mr. Weinstein?" And he said, "Oh, it has been months."

Then I went down the street, after I had gotten this invoice, I waited for a while and watched the service station. Mr. Mac R. Brown got on the telephone and called several times. Finally he jumped in a red Pontiac car he had and started out. I followed him about a half a block or a block behind him, and he went over to Mr. Weinstein's service station on Victory Boulevard and Riverside Drive and drove in the driveway, and Mr. Weinstein was waiting there for him and he got in the car and they sped away. They got in the Pontiac car. They departed in the same car that I saw on Sunset Boulevard that I followed. I saw Mr. Weinstein about either the next day or two days thereafter at his service station, at the same place I have mentioned. I had a talk with him. There were others there. There were quite a few men there. One thing in particular I remember was Mr. W. H. Cottrell, an executive of the Texaco Oil Company. I talked [244] to him and only had a very few words with Mr. Weinstein. I asked him if he knew Mr. Brown—Mr. Mac R. Brown. I received the same

(Testimony of John Foster.)

answers, that he knew him but he didn't. I asked him if he knew where he was. He said, "No;" he didn't know much about him; that they didn't get along very well. I did not say anything to him then about that. I don't believe I ever talked to Mr. Weinstein regarding the case after that.

### Cross-Examination

By Mr. Goodman:

On this first occasion that I met Mr. Rose I went out there to his place of business with an OPA investigator by the name of Mr. Storms. Prior to going out there I did not have arrangements with Mr. Storms that he was going in to the station of Mr. Rose and endeavor to buy some tires. The occasion of Mr. Storms and I going out there was Mr. Storms had talked to Mr. Rose, and he called him up on the telephone that morning. I was there when he called him on the telephone. And he talked to Mr. Rose and Mr. Rose told him to meet him at 11:00 o'clock at Olympic and Hill and he would have some tires for him. The arrangements I knew nothing about before that. Mr. Storms did not just call Mr. Rose on the telephone for the first time and state he wanted to buy tires. Mr. Rose asked him to call him at home, is what Mr. Storms told me. I don't know that. I don't know how Mr. Rose had met Mr. Storms before that telephone con- [245] versation. Only what Mr. Storms told me. Mr. Storms had told me that he talked to Mr. Rose some time or other prior to the date that this call was made that I overheard.



(Testimony of John Foster.)

As to whether I went out there on that occasion with Mr. Storms for the purpose of seeing if the sale was going to be made and making an arrest if it was made—I went to see if the sale was going to be made, but about the arrest I don't know about that. I have never had a badge with me in my life. When I went out there I did not stay in the car *on out* outside of the station. I stood over *right* across the street on the corner. I was in a position where I could see what was going on. I had previously discussed with Mr. Storms how the two of us were going to work this particular matter; I was going to stand outside and Mr. Storms was going to go in there, so that I could observe the sale and be a witness to it. Mr. Storms went in there and no sale was made. When I saw that no sale was made, I didn't walk into the station. I waited. I was walking down the street and Mr. Storms came down and met me, and my car was parked and we got in my car and drove into the service station. Storms came back and I found out there was no sale, and we went back to Mr. Rose's station, the two of us. That is the first time I met Mr. Rose. At that time I had a conversation with him. I did not ask him if he would not become an informer on behalf of the Office of Price Administration and tell me all about various tire deals that he knew about. [246] I asked him what he knew about the various tire transactions that were going on. This was after Mr. Hoffman talked to him. This first time I went out there to get him on a sale and didn't get him.

(Testimony of John Foster.)

and I went back with Mr. Storms into the station. I did not ask him to become an informer. I never used those words before in my life. I had not prior to that date parked my car in his station. I had not parked my car in his station after that date. As to whether I ever parked my car in his station—While I was sitting in it I might have gotten out probably for two or three minutes. As to parking it by paying him for parking—in his service station, I never parked there. I did not ask him to find a customer to buy my car. I would have taken around \$1250.00 for my automobile. I would like to have taken that. As to whether it was a 1939 and was worth about \$500—it was a 1940. I did not ask him to find a purchaser. There was some conversation between Mr. Rose and I concerning my car. I told Mr. Rose that I was going to sell my car; and he said, “I will make a deal with you.” And I told him that I was not interested. And he called me up—in fact, a couple of times—and told me that he had around a \$700 deal or something, and I still told him that I was not interested. I did not tell him I wanted \$1200. I didn’t give him any price. I have related everything that took place on this first occasion to the best of my knowledge. I asked Mr. Rose why he did not proceed to consummate the sale of Mr. Storms that I knew [247] he was going to make. He told me that he thought better of it. And would not make the sale. At the time that Mr. Storms and I went out to Mr. Rose’s station I did not already know that Mr. Rose had bought some

(Testimony of John Foster.)

tires from a place in Ontario. He had not purchased any tires at that time. I did not know that he had bought any tires from any source up to that time. I had no information about any purchases by him at that time. I believe the next day I saw him was about two or three weeks after that date. I never asked him to become an informer at any time. On that occasion I did not discuss with him the sale of my car.

As to whether when I went out there on that second occasion I had received any information or knowledge that Mr. Rose had bought any new tires and tubes from a retailer who was liquidating—Only that Mr. Rose told me on the first occasion that he was mixed up with the tire boys in some deals. He told me he was mixed up with Mr. Vitagliano and some of them, so I knew that he was, from his own lips.

As to whether I knew that he had bought tires legitimately, as a retailer—

He didn't break it down, whether it was legitimate or illegitimately. He used the phrase "mixed up", as well as I recall. He said he had been *instigated* or mixed up. I wouldn't say that he used exactly those words with Mr. Vitagliano. I am sure he told me that in substance. He used the names of some persons with whom he was mixed up. He used [248] Les Carson, Louis Vitagliano and Leo the Lion. I had met Mr. Vitagliano. Mr. Paddock, to my knowledge, has never been an OPA



(Testimony of John Foster.)

representative and he has never worked for the Government at any time, to my knowledge. Mr. Rose and I never discussed the subject matter that our representative of the Office of Price Administration would steer sales to legitimate retailers where other retailers were liquidating, at any time. The third occasion is when I saw Mr. Rose at Mr. Dundas' office in the middle of July, 1942, to the best of my recollection. As to whether up to that time I had made any investigation or received any knowledge that Mr. Rose had bought any new tires from any retailer who was liquidating, other than from the lips of Mr. Rose—I don't believe that we had then, whether that was before the Kreling deal or not.

As to the occasion for Mr. Rose coming into Mr. Dundas' office in the middle of July, 1942—Mr. Rose came in voluntarily. We had no knowledge that he was coming in. As to whether on that occasion he and I and Mr. Dundas had quite a kidding conversation—I would not say it was entirely kidding; we might have kidded a little bit after—not kidded, either, after the thing was over, that he knew better than we did to what extent he was mixed up and it was up to him to get himself cleared up. At that time any information that we had he was mixed up in anything that was unlawful was just hearsay. Mr. Rose and Mr. Dundas and I [249] were not kidding back and forth during that entire meeting about

(Testimony of John Foster.)

this gun and about this \$500 and all the facts that I spoke about. That was a very sober part of the meeting when Mr. Rose told us about the gun. He was very serious about it, and that was his reason for not giving us any more information about any of the activities. He told us he couldn't give us any of it; that he was mixed up and he wanted to get right, and if it was a matter of \$500 or \$1,000, why, that he could contribute to the OPA or anything else, he would be glad to do it so he could get a fresh start.

As to why I didn't arrest him if he made that kind of a statement—I have not power to arrest. Mr. Dundas has no power to arrest. We had nothing to arrest Mr. Rose for. We had complaints that he had committed an offense, but our investigation was not entirely closed at the time. At that time we did not decide we were going to shadow and trail Mr. Rose until we could get enough evidence on him. This investigation was not secretive at all. Practically everything I learned I discussed with Mr. Rose and I practically begged him—I won't say exactly—but I implored him on several times why he didn't cut out his activities that he was doing and it would save him a lot of trouble. It is not a fact that all the information that my office had about these matters I got from Mr. Rose directly. I did just previously, in answering your question, state that I did get the information from Mr. Ross up to that time. [250]

(Testimony of John Foster.)

As to whether my office, on the occasion when he said that Mr. Goodman was representing him and that I would get the invoices from you and whether I didn't get invoices sent to the Office of Price Administration from your office in which you gave my office copies, not only of all the purchases made by Mr. Rose which have been testified to in this case, the one in Ontario, the one in Pasadena, but also copies of the invoices showing the sales to the Golden Lubricants—I picked them up at your office on one occasion, after calling you for them, and they were not as I had asked for them.

Mr. Goodman: Now, I demand that they be produced at this time, and I understand you have them here, Mr. Norcop.

Mr. Norcop: Everything that you have asked for. At this time, if the court please, in the interests of justice, I think that, in view of the court's ruling, the government, which is not here to prosecute any person improperly moves to dismiss Mr. Lieb, because there will be nothing further and I anticipate the court's ruling and I would agree with the court's ruling. We will save his counsel an effort of making a motion to dismiss.

The Court: The court feels that the motion should be granted and Mr. Lieb's indictment, so far as Mr. Lieb is concerned, dismissed and bond exonerated. [251]



## JOHN FOSTER

recalled.

## Cross Examination—(Resumed)

Mr. Norcop: Do you want us to produce now what you asked about?

Mr. Goodman: I would like to do it through the witness your Honor.

The Witness:

As to whether it is a fact that I received from your office a copy of the purchase by Mr. Rose of the tires from the location in Ontario, California; that is the last one I called you for, and this is the one you sent to me through the mail, a copy of the purchase from Ontario.

(Counsel has handed the witness a document from the files and records of Government counsel.)

I am not sure whether the original of this purchase is now in evidence. As to Government Exhibit 14, I did not receive that portion of the exhibit which is the first document in the exhibit, which is invoice 7441, along with the document which you first showed me, which is a copy of that invoice. I picked that up at Sam Kelber's, out in Ontario, California. As to whether I did have notice from Mr. Rose that I find on this particular purchase—not notice; I knew of it before I asked for a copy of the invoice. I knew about it before, and then when I got the copy of the invoice, I knew the number of tires, the number of tubes, and the purchase price.

(Testimony of John Foster.)

(The document referred to was marked Defendant's Exhibit No. 8, for identification.)

As to whether I have related to the court, or any of the government witnesses related to the court all of the information and knowledge that I have pertaining to sales of tires made by Mr. Rose, I wouldn't attempt to answer that [252] question, because there may still be some; in fact I am sure there is still a sale that has not been referred to. As to this other document, which also comes from the Government counsel's files and records, I believe I did receive that document from your office. I believe this is one of the ones I asked you to have certified as correct, and you stated that you couldn't do so. I did not ask you for certified copies, I asked you to have Mr. Rose have this certified as being correct and a legitimate sale by Mr. Rose. Mr. Rose's signature was already on it.

Whether I would introduce here in evidence a sale to the Golden Lubricants, which is Government's Exhibit 28, and whether I can state to the court and jury why this particular sale and transaction was not previously brought to the attention of the court and jury, I couldn't answer that, because I am not sure that it was not. I have not since this trial started made an attempt to come to your office to ask for the original invoice of that particular transaction. I was in your office before the trial. I picked up the documents that I asked for; I have not been back there since.

(Testimony of John Foster.)

(The document referred to was marked Defendant's Exhibit C for identification.)

As this copy of invoice which also comes from the files and records of government counsel, and whether I received that document with the same letter of transmittal, with the documents that have been previously identified by [253] me—I picked this up in your office, yes, when I requested you to have it for me. I picked this up at Mr. Kreling's. I got the original of Government's Exhibit No. 10 from Mr. Kreling, who was the seller of the tires to Mr. Rose. Mr. Rose, through you, furnished me with a copy of that invoice which I picked up at your office, at my request.

(The document referred to was marked Defendant's Exhibit D for identification).

As to this copy of another invoice dated September the 5th, 1942, and whether I got that from your office along with the other documents which I have previously identified, yes, I picked this up—well, I got it from your office, at any rate. I can't say whether this is one I got through the mail or whether I picked it up at your office. As to whether I knew when I received the copy of the invoice from your office, whether it was in person or by mail, that Mr. Rose claimed that he sold 48 new tires and 130 new tubes to the Golden Lubricants, Inc. on September the 5th, 1942, I knew that prior to picking it up; that is why I asked for it. I asked Mr. Rose what he did with



(Testimony of John Foster.)

the tires. He told me he sold them to Joe Munn, like he did the rest of them.

(The document referred to was marked Defendant's Exhibit F for identification.)

I can't answer yes or no whether Mr. Rose had previously informed me that the tires which he had purchased from Sammy's Auto Shop in Ontario, from Mr. Slavett in Pasadena, [254] and from Mr. Mike Kreling, and from Sam Kelber he had sold to the Golden Lubricants, Inc. As to the tires that he had purchased from Ontario, he told me he had sold those to Joe Munn. He did not give me any other information, other than Joe Munn. There was nothing else said about any name of purchaser other than Joe Munn. I couldn't tell you whether that is the same Joe Munn whose name appears on the invoice of September 5, 1942, as a representative of Golden Lubricants, Inc.

As to whether actually, before the indictment was returned in this case, I either had knowledge from sources other than Mr. Rose, or from Mr. Rose directly, or through you as his attorney, of all of the purchases of tires and tubes from the four transactions which have been related in this courtroom that he purchased, I don't believe I did on the Slavett tires. I am not sure of that, but I don't believe I ever asked for the Slavett sale. I received the documents for every purchase that I asked for.

I had knowledge or notice, either from independent sources, or from Mr. Rose, or from you as his

(Testimony of John Foster.)

counsel, that Mr. Rose had purchased new tires and tubes from Ontario, from Mr. Mike Kreling and from Sam Kelber.

Before the indictment was returned, I know how or through what means I discovered the sale of the new tires and tubes to Mr. Rose by Mr. Slavett. I discovered that when I called on Mr. Humbert of the Bay Cities Transfer Company. [255] He told me that he had picked up tires at that address. I had not previously to that date made arrangements with Mr. Humbert, that he was to notify me of any and all movements of tires made on behalf of Mr. Rose. I made such arrangements upon that call that I found out he had picked up tires at 1850 East Colorado, Pasadena, California. I can't recall the exact date of that particular call. I believe it was in September. It was after the sale to Mr. Reuben Slavett by Mr. Rose. Possibly two weeks. Coming back to the original conversation that I had with Mr. Rose, I stated yesterday that I had previously had a conversation with Mr. Storms, also an investigator of the OPA; as to whether it is a fact that Mr. Storms had previously told me that he had had a conversation with Dave Rose, the brother of the defendant, Benjamin Rose, in reference to the sale of new tires—I can't answer that correctly because I don't recall whether he told me Ben Rose or Dave Rose. It could have been Dave Rose. It is not a fact that when Mr. Storms and I then drove into the gasoline station after I saw that no sale was

(Testimony of John Foster.)

made, the first thing I said to Ben Rose: "Where is Dave?" I couldn't say whether Mr. Storms said it or not. Dave's name was not mentioned at that time to the best of my knowledge. It is not a fact that Mr. Ben Rose answered and said, "He isn't here". I didn't say, "Why, I can see his car there". Mr. Rose did not answer, "Why, Dave had just went down to the Marine Recruiting Office." No such [256] conversation in my hearing ever took place. When in a previous answer I said, "Not at that time", I did not have reference to some other time that I may have had a conversation in which Mr. Dave Rose was involved.

The only other conversation is that at one time Ben told me that his brother was going in the navy or was in the navy. That is all that was said. There was nothing about any marine corps or anything ever mentioned, because I never inquired about it. That was not the same time Mr. Ben Rose said he was enlisting in the navy, that was at some other time.

Yesterday I testified that I did not park my car at Mr. Rose's station. As to whether I parked my car on many occasions a half a block south of Olympic and Hill at one of the parking stations of Mr. Rose—that is at a parking lot, and I gave you a statement I never parked in his station. I never did. I parked at a lot across the street; it has no name on it, to the best of my knowledge. I



(Testimony of John Foster.)

couldn't tell you who owns it. I paid for my parking every time I ever parked. As to whether I know that is Mr. Rose's parking lot, Mr. Rose was never there. I saw him in front of the lot on one occasion.

It is not a fact that on this occasion when I had this alleged conversation in which Mr. Rose said, "Why don't you come over on my side?" that at that time I told him that I was not making very much money working for the OPA; that I was losing my [257] home, but that I had to stick with the OPA because they had already got me two deferments and I wanted to stay there and stay out of military service. At no time did I ever make such a statement to Louis Vitagliano. I did not get two deferments.

If Mr. Rose, on one occasion, fixed my automobile, something wrong with the electrical system, while that car was on one of his parking lots, he certainly did it in my absence. I knew nothing of it. I never asked Benjamin Rose to sell my car. I told him I wanted to sell the car.

On the occasion when I went out to 613 North Virgil Avenue, when these pictures were taken, I did not know prior to that date that there were new tires and tubes stored at that address. The date of that occasion, to the best of my knowledge, was September the 19th, on a Saturday. I hadn't found out prior to that date that Mr. Rose had to move the storage of his new tires and tubes from 613 North Virgil to the place on Sunset and Bron-

(Testimony of John Foster.)

son. I had not found out prior to that date through the truck driver, Mr. Humbert, and through my investigation of all the purchases in Pasadena, and from Mr. Kerling, that the tires had been delivered to 613 North Virgil. I first found out that they had been delivered to 613 North Virgil after September the 19th, after I found that warehouse filled with tires.

I went out there definitely. At that time, I did not know that those tires belonged to Ben Rose. I never did [258] find out definitely that they belonged to Mr. Rose because he denied that they belonged to him. Whether the police officer took the key out of his pocket against his will, he still denied that they were his. I didn't find out definitely then. I couldn't say that I know now that they are his tires. I have a pretty good idea, but I couldn't state that I know that they are his.

Mr. Goodman: At this time I ask that those four tires from the Hertz car, or one of them at least, be brought into the court room.

(By the Witness):

I did not ever find out definitely that Mr. Rose owned any of the tires that were returned in the Hertz truck. As to those four tires that came from the Hertz Driverless Company, I picked them up there, around October the 5th. I made a record of the pick-up of those tires. I made it on a piece of paper, and I think I still have that piece of paper. I did not mark the tires in any way. I took the

(Testimony of John Foster.)

tires and tagged them as they are tagged now, if you will notice, and on that very occasion. As to this one of these tires and this white tab, that is in my handwriting. I wrote that at that time.

(Counsel reads.)

“Ben Rose—Picked up a Hertz-U-Drive October 5—42—Foster.” [259]

(By the Witness):

As to where I got the information at that time that these tires belonged to Ben Rose, Mr. Mendenhall of the Hertz-U-Drive told me that Benjamin Rose hired the truck and Benjamin Rose did not bring it back, but that Benjamin Rose came back again and asked him for the four tires that were in the truck, and he referred him to Mr. Begley. I was here in court the other day when he testified that he did not know who came to call for the tires. I am certain he told me that Ben Rose called for the tires. Based upon that statement, I tabbed these tires as Ben Rose's tires. I did not see the tires returned.

My conclusion, that they were Ben Rose's tires was not based upon—that is, the record that I made here, that tab, was not based upon what the gentleman told me at the U-Driver's place. Those are some of the tires that were at 3200 City Terrace. I knew that Benjamin Rose picked up those tires, even though they were billed out to Mac R. Brown, and they had those tires taken out to a certain place. I know that because Mr. Humbert told me.



(Testimony of John Foster.)

When I got out there at 613 North Virgil, when I saw Mr. Rose there, that is, when he drove up, I had not found the warehouse full of tires at that time. When I did find the warehouse with the tires, I had no knowledge at all whether they were stolen property or were not. Prior to the time that I went there, I had not called the Wilshire [260] police station and asked for two officers to come out, particularly Officer Hamilton. I called them after I found the warehouse. After I saw Mr. Rose on the first occasion that day. I called the police officer to see what was in the warehouse, and I did not have any powers at all to go in that warehouse to find out who it belonged to, or anything else. At that time I did not know whether it was Mr. Rose's warehouse, or whose it was. I did not have a search warrant. I did not ask the police officer to get one, when I came out there. When the police officer arrived there, and Mr. Rose refused to deliver the key to the place, I believed he had a key. I did not at any time ask the police officer Hamilton to open up the place, to get the keys from Mr. Rose. I was standing by. I cannot recall that Mr. Rose was there the first time Mr. Hamilton arrived. I don't recall what was the first thing I said to Officer Hamilton in the presence of Mr. Rose.

As to whether I recall telling him "There are some new tires and tubes stored in this place. We would like to get in there"—I told him we would like to get in there, yes. After I got in there, I did not have a picture taken of the place, without mov-

(Testimony of John Foster.)

ing any of the tires or boxes or paper, or empty boxes, as reflected in this picture. Practically everything in the place was moved. This picture does practically reflect the appearance of that room as it was when I first walked in. After we got in there, the first [261] thing was to take an inventory of the tires, and in inventorying the tires, we moved them. We took an inventory of the tires. We had to move them to take it. We kicked the wrappings aside quite a bit, and in doing so, we had to move some of the tubes to get at the tires. After that we kicked the wrappings back, as nearly as we could, with our foot, as they were originally, and we did move the lantern that was in there, so that it would show in the picture. We did not have to move any tubes out of the boxes. We moved the tube boxes. As to whether we took a tube out of a box, and put it on top, so it would reflect in the picture—I don't say we did not. I don't remember. I could have.

If I recall correctly, I took an inventory of 67 tires plus the nine that were taken into the police station. The nine tires that were taken to the police station were the only tires not wrapped at all. How many were partially wrapped, I couldn't say. I don't remember. No tires were left in the place entirely unwrapped. We did not unwrap any, or take one wrapping off of a tire. In taking the inventory, I don't believe any paper fell off. We were careful, because we did not want to do that. To take that inventory, I would say it didn't take us more than a half an hour. Mr. Rose was not

(Testimony of John Foster.)

there all that time. I believe Mr. Rose left toward the end. I am not sure whether Mr. Rose was there when the photographer was there. If he was, he was not there very long after the photographer got there. I believe they left. [262] It is not a fact that he was there when the picture was taken. I believe we called the photographer before taking the inventory. I couldn't be sure of that. I don't believe we waited until the inventory was taken, and then called him. It could have been, however.

There were nine tires unwrapped. I thought if there were any stolen tires in there—we had no knowledge of where the tires came from, and I wanted to check those tires, and I suggested the only ones Officer Hamilton take would be the ones which were unwrapped. As to whether I remember my testimony yesterday that the reason they were taken was because I wanted them to be taken there so they wouldn't be stolen, because they were unwrapped—no, sir, I did not make any such statement, I believe. I did not ask Officer Hamilton to take the tires. He took them voluntarily. I did not later get a telephone call from Mr. Hamilton telling me that he was going to release the tires to Mr. Rose. I got one from Hamilton asking me if he could release them. I told him no, I would refer it to Mr. Dundas. I believe I talked to Mr. Dundas. Then I told him, so far as I was concerned, "You will have to have them there." I don't believe Mr. Dundas told me to release them. At that time Officer Hamilton did not tell me over



(Testimony of John Foster.)

the phone that he had already told Mr. Rose to come up and get his tires. He told me, if I recall, that Mr. Rose was up there in a truck to pick them up. After speaking to me, he told me he would tell Mr. Rose [263] he couldn't deliver the tires. The purpose of my holding the tires at that time, when I found out they were Mr. Rose's was I knew that the tires were not legal. I did not just testify that I knew these tires came from a certain place, because at that time I didn't know where these tires came from. As to whether I know now—I am not sure. I know two loads were put in there, and where those came from, but as to all the tires put in I couldn't testify where they came from. Confining the tires to the nine tires, I do not know where they came from. On this day I did not know where they came from. Mr. Rose did not tell me that these tires from the warehouse at 613 North Virgil had been sold to the United States Defense Supply Corporation. I did not ever check to see.

(Counsel shows the witness a document.)

That's the first time I ever saw that. I have seen a form of that kind before. I know what it is. It shows a purported sale to the Defense Supply Corporation of the United States Government. That does not require a certificate.

(The document referred to was marked Defendants' Exhibit F for identification.)

(Testimony of John Foster.)

Cross-Examination

By Mr. Angelillo:

The first occasion that I saw Mr. Vitagliano, I believe was May 26, 1942, at 12th and Stanford. I don't believe I [264] ever asked him to come to my office. I did not ascertain whether he had one or more service stations at that time. I found out subsequently that he had two. I know the address, but I don't know the name. I never heard of Louie's Super Station. I never knew Signal Motor Service belonged to him. I know where that is, but I never knew that it belonged to Vitagliano. I have been to Stanford Motor Service. I knew that was his.

(Two letters are produced.)

As to these two letters, I saw two similar. I imagine they are the same ones.

(The documents referred to were marked Defendants' Exhibit G, for identification.)

I saw these two letters either on May 26th, or the following call that I made to Mr. Vitagliano. I discussed the contents of these two letters. There was present William Fitzer, Louie Vitagliano, and myself. Mr. Vitagliano showed us the letters, and told us that he had authority to sell a few tires that he had, and that this was his authority, and we told him that Mr. D'Orr was wrong on it; that had he come out and looked at the tires he would have been wrong, but up to that date it was probably all right, as long as he had the authority for Mr. D'Orr.

(Testimony of John Foster.)

That discussion could have taken place at the time that the trucks were there. I couldn't say whether it was on that date, or the following call. We were not by the trucks. The freeze order was effective, on new [265] tires December 12, 1941, at midnight. The freeze was continuous from that day to now on new tires, under regulations. We had regulations handed to us by our office. I became an officer of the OPA office the first of April, 1942.

As to Exhibit No. 30, I saw that for the first time, I believe, probably two weeks or a month after it happened. I got that from W. J. "Bill" Davis, he calls himself. The witness who testified on the stand. I checked the Office of the State Board of Equalization, at 1031 South Broadway. I checked the Department of Motor Vehicles. The record from the Department of Motor Vehicles indicating the ownership of the Chevrolet, I got over the telephone. I asked for the license number, because Davis had told me he was not sure what kind it was. I couldn't say who wrote the word "International" on that. It was on there when I got it. I have not had occasion to check the books of Mr. Vitagliano.

As to whether I have had occasion to check the original inventory at our office, pertaining to Mr. Vitagliano, I don't believe we have, not to my knowledge, an inventory at our office of Mr. Vitagliano. An inventory is made by any service man if he had tires on or about January 5, 1942, indicating the number of tires he had in his possession. I did have a discussion of Mr. Vitagliano as to the



(Testimony of John Foster.)

one-third interest that he had in the tires purchased by Mac Brown prior to the time they were purchased by Mac Brown. Prior to the time that these tires were purchased by Mac Brown, if we are talking [266] about the same tires that were purchased, I talked to Mr. Vitagliano about his one-third interest in those tires. I mean prior to the time that that sale was made to Mac R. Brown, Mr. Vitagliano told me that in fact he owned practically all of the tires; that he had put up most of the money himself, and that they were all his; that they did not belong to him; they had a slight interest, but it did not amount to anything; that the tires were practically his.

As to whether it is a fact that in the conversation, after the tires were purchased by Mac R. Brown, that I told Mr. Vitagliano that Mac Brown told me that he, Vitagliano, had a one-third interest in the tires, I haven't talked to Mr. Vitagliano since that time about the tires, and I haven't seen Mac Brown until he came to court here, since that time. Mac R. Brown bought those tires on September 29th, I believe it was.

As to this truck that Mr. Graham testified about here the other day, there was some transaction had on or about September 9, 1942, wherein Mr. Vitagliano was a purchaser or in any wise connected with that transaction. There is some evidence in this case about it. That sale was the one that Parsner sold purportedly to Mac R. Brown. As

(Testimony of John Foster.)

to whether Mr. Brown subsequently told me that Mr. Vitagliano had an interest in that sale, Mr. Brown told me that he did not know; Mr. Vitagliano never had told him.

As to whether it is a fact that when Mr. Brown was at [267] my office, on one occasion, and he was asked for a letter in my presence by Mr. Dundas, he told me at that time that Mr. Vitagliano had a one-third interest in that deal that he had; Mr. Brown was never in my office, to my knowledge; not in my presence, anyway, and I do not know anything about such a conversation. I could have had a conversation about a month or so ago with Mr. Vitagliano. Where that meeting was, I do not recall. I saw Mr. Vitagliano once, I believe, at our office, and once at his station, but we did not discuss the trial; only he told me, regardless of how it came out, he hoped I had no hard feelings against him, and I told him the same. There was no discussion about where he got the tires, or anything else.

As to whether it is a fact that I told him, "Louie, the only thing I knew about your transactions, is that you purportedly loaned some money to these fellows, because you sold your stations, and you got the interest on your money," that conversation never took place with me, and not any similar conversation. He told me he was not worried at all about the case from the start. He told me that his skirts were clean. They all did. He told me that at the first meeting that I had, he told me that these

(Testimony of John Foster.)

two trucks were at his place of business there merely as an accommodation.

As to whether he on one occasion, in September of 1942, told me that he was at Ontario when these tires were loaded on the trucks, I never discussed Ontario with Mr. Vitagliano. [268] I did not have such conversation.

Redirect Examination

By Mr. Norcop:

(By the Witness)

Mr. Goodman asked me if I had had a conversation with Mr. Rose regarding Joe Munn. I had such a conversation, I believe it was in October at his service station at Olympic and Hill. There wasn't any one else there. Mr. Rose asked me if I had found Joe Munn yet. I laughed and said, "Oh, sure, I found him." He said, "That's a good thing, because I have sold him some more tires."

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SAMUEL KILBURN DOWDEN,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Norcop:

In 1942, I was a truck driver for the Bay Cities Moving & Storage in Los Angeles. I believe it was jointly owned by J. J. and C. A. Humbert.



(Testimony of Samuel Kilburn Dowden.)

Last summer I went with one of the trucks of that concern to Ontario. I started from the place of business on Melrose. There were two trucks. Don Parmalee was the other driver. We went to Main Street in Ontario. I did not pick up a load there. We went out in the side of town; I don't know which direction. That was a [269] residence. I see some one here in court now that I saw at that residence on that date, known to me as Sam Blank; the only name I know of. I refer to the man in uniform. (Defendant Race was present at the counsel table and was wearing a uniform.) I did not see any one else among the people sitting to your left there—not for certain. As to who else was there when I saw the man Sam Blank, I don't know any of the names. About four or five people there. Mr. and Mrs. Humbert went out there. They were not there when I arrived. I think they arrived a few minutes later.

As to any conversation I had with this man Sam Blank before Mr. and Mrs. Humbert arrived, I don't believe anything much more than out of the ordinary. Mr. and Mrs. Humbert had a discussion. After the trucks were loaded I drove one of them back into town. I drove the truck to, I think it was about 613 on Virgil. I unloaded it there. I believe the invoice was receipted for in my presence, after the truck was unloaded. I believe I signed it, even. Exhibit 19, is the one I referred to. That is my signature. I do not recall seeing the writing put on there.

(Testimony of Samuel Kilburn Dowden.)

Cross Examination

By Mr. Goodman:

(By the Witness)

I did not see this man sign: Ben Rose. I turned the copy of that invoice over to Mr. Humbert. Mr. Humbert, I believe, got the signature. I had it all the way to Ontario. While I had it in my possession, I did not see the signature of Ben Rose on it. I did not look at it that closely, as I [270] remember. I have, from that date, before I came to testify here today, discovered that Ben Rose had signed that delivery ticket. I knew it was Rose, before I came to court here. I did not make any other deliveries of tires.

(A man stood up at the request of Mr. Angelillo.)

Prior to today I would say I have seen this gentleman before. Where, I can't say.

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WILLIS S. STORMS,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Norcop:

I am an investigator for the Office of Price Administration, an agency of the United States Government. I entered on that employment May

(Testimony of Willis S. Storms.)

1st, 1942. I have been to 819 West Sixth Street in Los Angeles in June 1942. I was on the premises. After I arrived at that location there at 819 West Sixth Street, I had a conversation at that location. I received a document from the person I had the conversation with.

Mr. Goodman: I object to it as incompetent, irrelevant and immaterial, and no foundation laid. What person?

The Court: I am going to overrule the objection as a preliminary question. [271]

(By the Witness)

This document is the one I received on that occasion.

(The document referred to was marked Government's Exhibit No. 31 for identification.)

After receiving this document, I went to 955 South Hill Street to a parking lot.

Mr. Noreop: We offer the document in evidence.

Mr. Goodman: Objected to as incompetent, irrelevant and immaterial, no foundation laid.

Mr. Sullivan: No connection with the defendants.

The Court: Not in evidence.

(By the Witness)

After I arrived at 955 South Hill, I saw an attendant there.

Mr. Goodman: I move that that be stricken as being a conclusion of the witness. If he knows his name, let him state his name.



(Testimony of Willis S. Storms.)

The Court: The motion will be denied.

Mr. Goodman: May I take the witness on voir dire for that one question, your Honor?

The Court: No. We are going to move along here.

(By the Witness)

I did not see the defendant Mr. Rose there on that first occasion. I was there at the location about five minutes. I returned about 2:00 o'clock in the afternoon, June 24th. I did not then [272] see Mr. Benjamin Rose. I came back at 5:00 o'clock. I saw a man that represented himself to be Benjamin Rose or Ben Rose. I see Mr. Rose here in the courtroom. That is the man. I had a conversation with him. No one else was present there in hearing of the conversation. It took place in the little office building on the lot, gas station office.

I said, "Ben?" He said, "Yes." "I want to see you for a minute." He says, "What about?" I said, "Tires." He says, "What kind of tires?" I said, "New tires." "Who sent you?" I said, "The old gentleman down on the parking lot on Sixth Street." "Why didn't he fix you up?" Mr. Rose continued. "He told me that I would have to see you; that you were the owner." Rose then said, "How many tires do you want and what size?" I said, "Well, it depends on the price." And then he said, before I continue further, he said, "Have you got any identification?" And I said, "What for?" He says, "I can't afford to take any chances,

(Testimony of Willis S. Storms.)

you know." I said, "Well, I have got the money to buy the tires and that is all I want to discuss with you." He said, "Well, I should know something about you. Have you got a business card or something?" I said, "No." I said, "You are not going to get me in any trouble and I am not going to tell you who I am. In fact, it is none of your business." He looked me over pretty carefully. And he said, "Well, what size?" And I said, "6.50 x 16s." Rose said, "Well, I can give you four beautiful new tires, Goodyear or Miller, for \$175."

I said, "I could not probably afford that much." I [273] asked him how much new retreads would be. He says, "I will give you four dandies for \$25 apiece." I said, "Well, I haven't got the money with me, but when can I get the tires?" He said, "Well, what do you want to do? Do you want new tires or retreads?" I said, I don't know."

So he handed me a parking ticket with a telephone number on it, and said, "Call me up at this telephone number tomorrow morning and tell me what you want and I will tell you where to meet me."

This is the ticket that he gave me. Writing was placed on there in my presence by Mr. Rose.

(The document referred to was received in evidence and marked Government's Exhibit No. 32.)

I left the premises at 955 South Hill Street. I returned to those premises again the following

(Testimony of Willis S. Storms.)

morning at 11:00 o'clock. I saw Ben Rose at the same location, 955 South Hill Street. I had another conversation with him. There was present in the hearing of the conversation a young man known to me or introduced himself to me as David Rose, said that he was Ben Rose's brother. That was all that was present in the hearing of my voice, so far as I know. I arrived at this parking lot at 11:00 o'clock, and was greeted by this young man representing himself as David Rose. Ben Rose arrived a very few minutes after I arrived on the parking lot. Ben Rose immediately started to question me again as to my identity.

He said, "I have got to know something about you." [274] And I said to Rose, "I thought we had discussed that yesterday." He said, "Well, who are you?" And I said, "It is none of your business." And I repeated, "You are not going to get me into any trouble and I haven't got any papers." He said, "I am not worried about that and I can't afford to take any chances." I said, "Well, what about the tires? Where are they?" He said, "Well, we have to go over here a few blocks." He said, "What did you decide on?" I said, "Two new 6.50 x 16 tires and two new retreaded tires."

Ben Rose and his brother and I started to walk off the lot, when the defendant said, "Well, let's get in your car," meaning my car. I started the car and had driven approximately 25 or 30 feet when the defendant asked me to stop, and both he



(Testimony of Willis S. Storms.)

and his brother got out of the car and walked over a short distance, I would say 20 feet or 30 feet, to the parking lot attendant. He came back and said, "I guess we can't do no business, Mr." I just brandished my hand casually, got in my car and drove off the lot.

Cross Examination

By Mr. Goodman:

No sale was made. I went there in the performance of my duty. In the performance of my duty, I was not exactly going to try to get him to make a sale. When I first went in there I did not tell him who I was. I did not tell him at any time that I was from the Office of Price Administration. All my conversation was pertaining to the purchase of [275] new tires or retreads. It is not a fact that the man I saw the first and second times was David Rose, and not this gentleman here, Ben Rose. I am not confusing the two gentlemen. I am positive. The gentleman who represented himself to me as David Rose looked like Ben Rose, and I would say he was about 20 to 22 years old, not quite as tall as Ben. I don't recall any other particular features of the gentleman. The one that I talked to the first time in my life at 955 South Hill Street was an old gentleman there. As to David Rose and Ben Rose, the one I spoke to first was Ben Rose.

The attendant that I saw there on the first occasion, I don't know his name. He was at 955 South Hill. On the second occasion, when I went there at 2:00 o'clock, when Mr. Ben Rose was not

(Testimony of Willis S. Storms.)

there, I don't recall to whom I talked. I would not be sure if that was David Rose. After I got in my car and left, when there was no deal made and they told me they couldn't sell me any tires, I got in my car and drove away. I went over to my office. We were only a block away from the office.

I think I met Mr. Foster on the street. While I was in there trying to make this deal, he was across the street. I went around the block because he was not there when I left, he was not across the street when I left the premises of Dave Rose's parking lot. I did not subsequently pick him up across the street. I picked him up I believe on Hill Street, between Tenth and Eleventh. When I left Mr. Rose and his [276] brother, I met Foster less than five minutes. At that time I had a conversation with Mr. Foster. I told him what transpired.

I don't recall whether I told him that there was a David Rose there. As to how I knew that this gentleman's name was Ben Rose when I first walked into the station, I addressed him in a questioning manner, with a raise of an inflection of my voice. I said, "Ben?" I knew his name was Ben because the attendant at the parking lot on Sixth Street told me to ask for Ben Rose. That is why I used "Ben Rose".

Mr. Norcop: We now offer this ticket into evidence again.

Mr. Goodman: Object to it on the ground it is incompetent, irrelevant and immaterial; it does not

prove or disprove any issue in this case and no foundation laid.

Mr. Norcop: Very well, the government rests, if the court please.

(Whereupon the jury retired from the courtroom and the following proceedings were had in their absence:)

The Court: Preliminary to making your motion, I think that the court should make a statement and it may save some time, that, in the first place, the court is going to require the government to elect between counts. The court, however, feels that the evidence is sufficient to submit this case to the jury as to all remaining defendants. There was some doubt in my mind as to one defendant until I reviewed part of the [277] record. So the court may be, in a sense, prejudging things that are to come, but I will make that statement so that you can make your formal motions and protect your record.

Mr. Norcop: We will elect to stand on the first count.

Mr. Goodman: May the record show that the second count is being dismissed?

The Court: Yes, the record will show that the second count will be dismissed.

Mr. Goodman: At this time, your Honor, we move, first, to strike all the evidence of any statements, admissions and declarations of any and all of the defendants made at divers times, on the ground that the agreement, contract, or conspiracy, or corpus delicti, is not established, and therefore,



those statements and admissions are not admissible for the purpose of proving any conspiracy, agreement, or contract, and cannot be used to establish the agreement, contract or conspiracy, without corroboration. That's my first motion.

The Court: Motion denied. I understand these are made for and on behalf of each and every defendant?

Mr. Goodman: Yes, unless I made a motion on behalf of any one defendant.

We also move at this time that all of the evidence be stricken on the ground that there has been no corpus delicti proved, no contract, or agreement, or conspiracy, and that all of the evidence that is in the record has not been tied up with the defendants in showing that they had agreed, or [278] contracted, or had entered into a conspiracy, to violate any law of the United States Government, among themselves.

The Court: Motion denied.

Mr. Goodman: I now move to strike the testimony of Mr. Storms and Mr. Foster pertaining to the attempted sale, by either Ben Rose or David Rose, to Mr. Storms, on the ground of entrapment.

The Court: The motion will be denied.

Mr. Goodman: I at this time, on behalf of Mr. Rose only, move that all the testimony between Mr. Foster and Mr. Vitagliano, outside of the presence of Mr. Rose, and pertaining to an alleged transaction in this case with which Mr. Rose had no connection, be stricken as not having been connected up with him in any manner, shape or form.

The Court: That motion will be denied.

Mr. Goodman: I move, on behalf of Mr. Rose, that all of the evidence——

Will the record show that I did not ask an exception to each one of those?

The Court: They will all be deemed excepted to; that you requested an exception and exception noted. I am glad to co-operate with you, to protect your record.

Mr. Goodman: I move to strike from the record, on behalf of the defendant Rose only, all of the testimony of the first Government witness, Henry Novisoff, concerning the sale of new tires and tubes to the defendant Taplin, and the [279] testimony of Mr. Foster in connection with that alleged transaction, and the documentary evidence in connection therewith showing the sale by Henry Novisoff to the defendant Taplin, and then a sale by Taplin to the defendant Brown, which was also testified to by Mr. Foster. I move that all that evidence be stricken upon the ground that Mr. Rose has not been tied in with that alleged transaction, in any manner, shape or form, either by way of purchase, delivery, or sale of said tires.

The Court: Motion denied, exception allowed.

Mr. Goodman: I move to strike all the testimony of—this is on behalf of Benjamin Rose again—of Mr. Soukesian—he was the eighteenth Government witness, pertaining to an alleged sale of tires by him, as a retailer, to Mac Brown, a defendant, and in which Mr. Weinstein acted as the broker; and I saw that all of the evidence in the

record pertaining to that sale to Mr. Brown, including the documentary evidence introduced to show the sale, and all of the documents in evidence pertaining to any delivery of those tires, be stricken, upon the ground that Mr. Rose has not been connected up with that alleged transaction, either directly or indirectly, and there is no showing that he ever formed any contract, agreement or conspiracy, with the other defendants in this case, in connection with that transaction.

The Court: Motion denied.

Mr. Goodman: Exception. [280]

The Court: Exception noted.

Mr. Goodman: I believe I have to make a specific motion on the testimony that does not pertain to Mr. Rose, and I believe the other defendants have to make similar motions on the testimony that did not apply to them. We could have a general motion, with the understanding that it is a general motion, to strike all testimony or transactions pertaining to a certain defendant, in which the other defendants were not involved, either directly or indirectly. That could be done, having in mind that we might be able to accomplish it in that form.

The Court: The only thing is, the court feels that there is sufficient evidence here to justify permitting this case to go to the jury, and it is for the jury to determine whether there were one or more conspiracies involved in this case, and what parties are involved in it, or whether it was one general scheme. So, with that thought in mind, the motions are mere formalities, so far as the court is con-



cerned at this time. At the same time, I desire to have you do whatever is necessary to fully protect your record.

(Following a recess the following proceedings were had in the absence of the jury.)

Mr. Goodman: On behalf of the defendant Benjamin Rose I now move to strike the testimony of John Dundas, chief investigator for the OPA, of an alleged conversation between [281] him and Mr. Taplin in June of 1942;

And I move to strike the testimony of Mr. Parsner, who testified concerning a transaction between himself and Mac R. Brown on September the 9th, 1942, and the Government Exhibit 22 in connection with that transaction by which 38 tires were sold to Mr. Brown;

And the testimony of Mr. Frank Montgomery, who testified concerning the invoice to Mr. Brown and also the picking up of the tires by a truck;

And the testimony of Mr. Henry Immerman, who testified concerning the fact that his retail sales tax permit number AS-17452 was used in the transaction by which Mr. Brown purchased some tires, and that he was in the piano business;

And I move to strike all of that testimony on the ground that all of the testimony had nothing to do with Mr. Rose, was not connected up with him directly or indirectly. He had nothing to do with that transaction or any of the transactions mentioned in those motions, or mentioned or testified to by those witnesses.

The Court: Motion is denied.

Mr. Goodman: Exception allowed, and may the record show I have taken an exception to any and all previous rulings on motions made by me and they were allowed?

Now, one other motion on behalf of Mr. Rose. I move at this time that the court instruct the jury for a directed verdict of acquittal against the defendant Rose. [282]

The Court: Motion denied.

Mr. Goodman: Exception.

Mr. Sullivan: On behalf of defendant Taplin, at this time I move to strike from the record all of the testimony of the witness Isenhower relative to a sale by Mr. Rose to him of certain tubes, 36 in number; and also, the evidence of Mr. Isenhower relative to the delivery of those tubes and the payment for the same.

On behalf of the same defendant Taplin I move to strike all admissions in the record in which he is not directly tied to or directly connected to any of the acts or asserted violations referred to in the record.

On behalf of the defendant Weinstein I make the same motion to strike from the record all admissions to which he was not a party, and which did not directly tie in into any transaction spoken of in the record.

And I make the same motion with reference to the defendant Mac Brown and submit those motions to the court.

The Court: Motion denied and exception noted.

Mr. Sullivan: On behalf of the defendants Taplin, Weinstein and Mac Brown I at this time also move the court to instruct the jury to return a verdict of not guilty.

The Court: Motion denied.

Mr. Sullivan: May I have exceptions to the rulings, your Honor?

The Court: Exceptions noted. [283]

Mr. Angelillo: May it please the court, on behalf of the defendant Vitagliano I move that Exhibit No. 30 be stricken from the evidence; also, the testimony with respect to the sale to Mr. Isenhower of the 36 tubes by Rose; further the admissions, declarations and statements by Foster wherein Vitagliano is mentioned; and the statements purportedly identifying Mr. Vitagliano at Ontario, Mr. and Mrs. Humbert.

Mr. Angelillo: And I further ask the court to direct a verdict, or have the jury return a verdict of not guilty for the defendant Vitagliano, and ask for a directed verdict.

The Court: The motions will be denied and exception allowed to each and every of the motions.

(Following a recess the following proceedings were had.

(Jury present.)

Mr. Goodman: At this time, may it please the court, the defendant, Benjamin Rose, rests.

Mr. Sullivan: As to the defendants Taplin, Weinstein and Mac Brown, they also rest.

Mr. Angelillo: May it please the court, the defendant Vitagliano rests. [284]



## INSTRUCTIONS

The Court: You have heard the arguments and I only wish to make this comment on the arguments: and that is that the five defendants here are no trial. You are not concerned with any crimes or any misbehavior of anybody else but these five defendants, and you are not here to try the police departemnt of Los Angeles or the operatives of the O. P. A. You are not here to approve or disapprove of any conduct of the defendants in this case. I make that comment in order, as Mr. Norcop says, to get you back on the beam, that there is only one issue before you and that is whether or not the defendants in this case are guilty or not guilty.

By the finding of an indictment no presumption whatsoever arises to indicate that a defendant is guilty, or that he has had any connection with, or responsibility for, the act charged against him. A defendant is presumed to be innocent at all *states* of the proceedings until the evidence introduced on behalf of the Government shows him to be guilty beyond a reasonable doubt. And this rule applies to every material element of the offense charged. Mere suspicion will not authorize a conviction. A reasonable doubt is such a doubt as you may have in your minds when, after fairly and impartially considering all of the evidence, you do not feel satisfied to a moral certainty of the defendant's guilt. In order that the evidence submitted shall afford proof beyond a reasonable doubt, it must be such as you would be willing to act upon in the most im-

portant and vital matters relating to [285] your own affairs.

Reasonable doubt is not a mere possible or imaginary doubt or a bare conjecture; for it is difficult to prove a thing to an absolute certainty.

You are to consider the strong probability of the case. A conviction is justified only when such probabilities exclude all reasonable doubt as the same has been defined to you. Without it being restated or repeated, you are to understand that the requirement that a defendant's guilt be shown beyond a reasonable doubt is to be considered in connection with and as accompanying all the instructions that are given to you.

In judging of the evidence, you are to give it a reasonable and fair construction, and you are not authorized, because of any feeling of sympathy or other bias, to apply a strained construction, one that is unreasonable, in order to justify a certain verdict when, were it not for such feeling or bias, you would reach a contrary conclusion, and, whenever, after a careful consideration of all of the evidence, your minds are in that state where a conclusion of innocence is indicated equally with a conclusion of guilt, or there is a reasonable doubt as to whether the evidence is so balanced, the conclusion of innocence must be adopted.

You are the sole judges of the credibility and the weight which is to be given to the different witnesses who have testified upon this trial. A witness is presumed to [286] speak the truth. This pre-

sumption, however, may be repelled by the manner in which he testifies; by the character of his testimony, or by the evidence affecting his character for truth, honesty and integrity or his motives; or by contradictory evidence. In judging the credibility of the witnesses in this case, you may believe the whole or any part of the evidence, or may disbelieve the whole or any part of it, as may be dictated by your judgment as reasonable men. You should carefully scrutinize the testimony given, and in so doing consider all of the circumstances under which any witness has testified, his demeanor, his manner while on the stand, his intelligence, the relation which he bears to the Government or the defendants, the manner in which he might be affected by the verdict and the extent to which he is contradicted by other evidence, if at all, and every matter that tends reasonably to shed light upon his credibility. If a witness is shown knowingly to have testified falsely on the trial touching any material matter, the jury should distrust his testimony in other particulars, and in that case you are at liberty to reject the whole of the witness' testimony.

The law is that a defendant charged with the commission of a crime is not compelled to take the witness stand and testify in his own behalf, and that his failure so to do shall raise no presumption of guilt nor entitle any inference of that kind to be drawn from such conduct of his. You are not limited in your consideration of the evidence to the bald [287] expression of the witnesses; you are



authorized to draw such inference from the facts and circumstances which you find have been proved as seem justified in the light of your experience as reasonable men.

There is nothing peculiarly different in the way a jury is to consider the proof in a criminal case from that by which men give their attention to any question depending upon evidence presented to them. You are expected to use your good sense, consider the evidence for the purposes only for which it has been admitted, and in the light of your knowledge of the natural tendencies and propensities of human beings, resolve the facts according to deliberate and cautious judgment: and while remembering that the defendants are entitled to any reasonable doubt that may remain in your minds, remember as well that if no such doubt remains the Government is entitled to a verdict. Jurors are expected to agree upon a verdict where they can conscientiously do so; you are expected to consult with one another in the jury room and any juror should not hesitate to abandon his own view when convinced that it is erroneous. In determining what your verdict shall be you are to consider only the evidence before you.

The law under which the indictment in this case is drawn provides that if two or more persons conspire to commit any offense against the United States, and one or more of them does any act to effect the object of the conspiracy, [288] each of the parties to such conspiracy is guilty.

In order to establish the crime charged, it is necessary, first, that the conspiracy or agreement to commit the particular offense against the United States as alleged in the indictment be established, and secondly, to prove further that one or more of the parties engaged in the conspiracy has committed some act to effect the object thereof.

To constitute a conspiracy it is not necessary that two or more persons should meet together and enter into an express or formal agreement for the unlawful venture or scheme, or that they should directly, by words or in writing, state between themselves or otherwise what the unlawful plan or scheme is to be, or the details thereof, or the means by which the unlawful combination is to be made effective. It is sufficient if two or more persons, in any manner, or through any contrivance, positively or tacitly come to a mutual understanding to accomplish a common and unlawful design. In other words, when an unlawful end is sought to be effected, and two or more persons, actuated by the common purposes of accomplishing that end, work together in any way in furtherance of the unlawful scheme, every one of said persons becomes a member of the conspiracy. The success or failure of the conspiracy is immaterial, but before the defendants may be found guilty of the charge it must appear beyond a reasonable doubt that a conspiracy was formed as alleged in the indictment, and that the defendants were [289] active parties thereto.

In order to warrant you in finding a verdict of guilty against the defendants, or any of them, it is

necessary that you be satisfied beyond a reasonable doubt that a conspiracy as charged in the indictment was entered into between two or more of the defendants to violate the law of the United States in the manner described in the indictment. It is necessary further that, in addition to the showing of the unlawful conspiracy or agreement, the Government prove to your satisfaction, beyond a reasonable doubt, that one or more of the overt acts described in the indictment was done by one or more of the defendants or at their direction or with their aid.

Under the charge made the conspiracy constitutes the offense and it must be made to appear from the evidence, beyond a reasonable doubt, before any defendant can be convicted, that such defendant was a party to the conspiracy and unlawful agreement charged, and that he continued to be such up to the time that overt acts were committed, if the evidence shows that there were any such. The mere fact that either or any of the defendants named may have engaged in the performance of any of the acts charged in the indictment as overt acts, would not authorize a conviction by reason of that fact alone, but it is necessary to show that such defendant or defendants were parties to the conspiracy and unlawful agreement before their guilt of the offense charged is made out.

Each party must be actuated by an intent to promote [290] the common design. If persons pursue by their acts the same unlawful object, one performing one act, and a second another act, all with



a view to the attainment of the object they are pursuing, the conclusion is warranted that they are engaged in a conspiracy to effect that object. Cooperation in some form must be shown. There must be intentional participation in the transaction with a view and purpose to further the common design. And if a person, understanding the unlawful character of a transaction, encourages, advises, or in any manner, with a purpose to forward the enterprise or scheme, assists in its prosecution, he becomes a conspirator. And so a new party, coming into a conspiracy after its inception, with knowledge of its purpose and object, and with intent to promote the same, becomes a party to all of the acts done before his introduction into the unlawful combination, as well as to the acts done afterwards. Joint assent and joint participation in the conspiracy may be found, like any other fact, as an inference from facts proved.

Where the existence of a criminal conspiracy has been shown, every act or declaration of each member of such conspiracy, done or made thereafter pursuant to the concerted plan and in furtherance of the common object, is considered the act and declaration of all the conspirators and is evidence against each of them. On the other hand, after a conspiracy has come to an end, either by the accomplishment of the common design, or by the parties abandoning the same, [291] evidence of acts or declarations thereafter made by any of the conspirators can be considered only as against the person doing such acts or making such statements. The declara-

tion or act of a conspirator not in execution of the common design is not evidence against any of the parties other than the one making such declaration.

The evidence in proof of the conspiracy may be circumstantial. Where circumstantial evidence is relied upon to establish the conspiracy or any essential fact, it is not only necessary that all the circumstances concur to show the existence of the conspiracy or fact sought to be proved, but such circumstantial evidence must be inconsistent with any other rational conclusion. That is, you are to consider all of the circumstances and conditions shown in evidence, and if it appears to you as reasonable men that, even though there is no direct evidence of the actual participation in the alleged offense by the defendants or either of them, a reasonable inference from all of the facts and circumstances does to your minds, beyond a reasonable doubt, show that the defendants, or some of them, were parties to the conspiracy as charged, then you should make the deduction and find accordingly.

It is not necessary that it be shown that any person concerned in the alleged conspiracy profited by the things which he did, but if any of the defendants, with knowledge that the law was designed to be violated in the particular [292] manner charged in the indictment, aided in any way by affirmative action in the accomplishment of the unlawful act, they would be guilty. To this statement there is one exception, and that is, if before any overt act has been committed on the part of any conspirator or at his suggestion or with his aid or participation,

any such conspirator withdraws from the project or the carrying out thereof, he ceases to be a conspirator and is without guilt.

A conspiracy cannot be established by mere suspicion, and evidence of mere relationship between the parties or association does not establish the fact of conspiracy. It is equally well established that the mere knowledge, acquiescence or approval of an act without cooperation, or agreement to cooperate, is not enough to constitute one a party to a conspiracy. There must be intentional participation in the transaction with a view of the furtherance of the common design or purpose.

It is not essential that each conspirator have a full knowledge of all the details of the conspiracy or the means to be used, but it is essential that a defendant, in order to be guilty, must have joined in the agreement.

I have stated to you that the offense may be established by circumstantial evidence; but circumstantial evidence, to warrant a conviction in a criminal case, must be of such character as to exclude every reasonable hypothesis but that of guilt of the offense charged to have been committed by the [293] defendants, or in other words the facts proved must be all consistent with and point to his guilt only, and inconsistent with his innocence. The hypothesis of guilt should flow naturally from facts proved, and be consistent with them all. If the evidence can be reasonably reconciled either with the theory of innocence or with guilt, the law requires that the



defendants be given the benefit of the doubt, and that the theory of innocence be adopted.

You are instructed that any retailer or distributor may deliver, ship or transfer new tires or tubes to any warehouse or premises owned, operated or controlled by such person, provided there is no change in ownership or control involved in this delivery, shipment or transfer.

You are further instructed that records of such delivery, shipment or transfer should be kept and reports in connection therewith should be made as may be required by the Office of Price Administration.

You are instructed that at the time of the alleged overt acts claimed to have been committed by the defendants by the government, the following rules, regulations and directives of the Office of Price Administration were in full force and effect:

#### Transfers to Liquidate Stock

(1) By a Retailer. Any retailer may (without certificate) transfer any new tire or tube to any retailer, distributor, wholesaler, or manufacturer.

(2) By a Distributor. Any distributor may (with- [294] out certificate) transfer any new tire or tube to any manufacturer.

(4) Records. Any person making a transfer pursuant to subparagraphs (1), and (2) and (3) of this paragraph (e) shall keep records showing the name of the person acquiring a new tire or tube, the number, size, and type

of the tire and tube acquired, the sales price, and the date of shipment or delivery.

The defendants are charged with conspiring to violate those certain regulations of the Office of Price Administration, which prohibit the sale of new tires and tubes, without a tire rationing certificate of tire rationing local boards, and unless you find it was the object of the conspiracy, if you find such conspiracy existed, to sell new tires and tubes to users or consumers without such certificates, then I instruct you to find the defendants not guilty. On the other hand, if you find beyond a reasonable doubt that said defendants or some of them conspired together for the purpose of selling new tires and tubes to users or consumers without requiring the furnishing of local tire rationing boards' certificates, then I instruct you to find such defendants that participated in said conspiracy, guilty as charged.

You are instructed that if I have said or done anything which has suggested to you that I am inclined to favor the claims or position of either party, you will not suffer your- [295] self to be influenced by any such suggestion.

I have not expressed, nor intend to express, nor have I intimated nor intend to intimate, any opinion as what witnesses are, or are not worthy of credence; what facts are, or are not, established; or what inference should be drawn from the evidence adduced. If any expression of mine has seemed to indicate an opinion relating to any of these matters, I instruct you to disregard it.

At times throughout the trial the Court has been called upon to pass on the question whether or not certain offered evidence might properly be admitted. With such rulings and the reasons for them you are not to be concerned. Whether offered evidence is admissible is purely a question of law, and from a ruling on such a question you are not to draw any inference as to what weight should be given the evidence, or as to the credibility of a witness. In admitting evidence, to which an objection is made, the Court does not determine what weight should be given such evidence. As to any offer of evidence that was rejected by the Court, you, of course, must not consider the same; as to any question to which an objection was sustained, you must not conjecture as to what the answer might have been or as to the reason for the objection.

If in these instructions, any rule, direction or idea be stated in varying ways, no emphasis thereon is intended by me, and none must be inferred by you. For that reason, you are not to single out any certain sentence, or any indi- [296] vidual point or instruction, and ignore the others, but you are to consider all the instructions and as a whole, and to regard each in the light of all the others.

The verdict to be rendered must represent the considered judgment of each juror.

In order to return a verdict it is necessary that each juror agree thereto. Your verdict must be unanimous. [297]



## EXCEPTIONS

The defendants except to the following errors in the record of the trial and proceedings:

1. The defendants except to the indictment and to the order overruling the demurrers to the indictment on each of the grounds therein specified.

2. The defendants except to the order overruling the defendants' demand for a bill of particulars.

3. The defendants except to the constitutionality of the statutes, rules and regulations under which the prosecution was attempted to be had.

4. The defendants except to the ruling of the court denying the motion to continue the case on account of the physical condition of defendant Benjamin Rose.

5. The defendants except to the order of the court denying defendants' motion at the opening of the trial that the court require the Government to elect upon which count the Government will proceed.

6. The defendants except to the ruling of the court overruling the motion to dismiss the charges on the opening statement of the prosecution.

7. The defendants except to the order of the court denying defendants' motion to dismiss each of the two counts to the indictment or that the court instruct the jury to return a verdict of not guilty as to each defendant on each count. [298]

8. Defendants except to the order of the court permitting Government counsel to make a further opening statement to the jury after Government counsel had made his first opening statement.

9. Defendants except to the use of evidence illegally seized in violation of the Fourth and Fifth Amendments to the Constitution of the United States.

10. Defendants except to the ruling of the court refusing to direct verdicts of acquittal at the conclusion of the Government's case and at the conclusion of the trial.

11. Defendants except to the rulings of the court denying the motions to strike the evidence of any statements, admissions or declarations of any or all of the defendants on the ground that there was no proof of any conspiracy or any corpus delicti.

12. Defendants except to the order of the court denying defendants' motion to strike the testimony of the witness, C. A. Humbert, that when he took the tires from Pasadena to 613 North Virgil Avenue that very few tires were left.

13. Defendants except to the order of the court sustaining the objection of Government counsel to the question asked of the witness, Leo Isenhower, as to whether or not he had disposed of any of the thirty-six tubes by sale.

14. Defendants except to the order of the court denying defendants' motion to strike all of the evidence. [299]

15. The defendant Rose excepts to the order of the court denying the motion to strike the testimony of Mr. Storms and Mr. Foster pertaining to an alleged transaction in this case with which defendant Rose had no connection.

16. Defendants except to the order of the court denying the motion of defendant Rose to strike all of the testimony between Mr. Foster and Mr. Vitaliano outside the presence of Mr. Rose and pertaining to an alleged transaction in this case with which Mr. Rose had no connection.

17. Defendants except to the order of the court denying the motion of defendant Rose to strike all of the testimony of Henry Novisoff concerning the sale of new tires and tubes to the defendant Taplin and the testimony of Mr. Foster in connection with that alleged transaction and the documentary evidence in connection therewith showing the sale by Henry Novisoff to the defendant Taplin and then a sale by Taplin to the defendant Brown.

18. Defendants except to the order of the court denying the motion of the defendant Rose to strike all of the testimony of Mr. Soukesian pertaining to an alleged sale of tires by him as a retailer to Mac Brown and in which Mr. Weinstein acted as the broker and the evidence pertaining to that sale to Mr. Brown including the documentary evidence introduced to show the sale and the documentary evidence pertaining to any delivery of those tires.

19. Defendants except to the order of the court denying [300] the motion of the defendant Rose to strike the testimony of John Dundos of an alleged conversation between him and Mr. Taplin in June of 1942.

20. Defendants except to the order of the court denying the motion of defendant Rose to strike the testimony of Mr. Parsner concerning a transaction



between himself and Mac R. Brown on September 9, 1942, and Government Exhibit 22.

21. Defendants except to the order of the court denying the motion of defendant Rose to strike the testimony of Mr. Frank Montgomery concerning the invoice to Mr. Brown and the picking up of the tires by a truck.

22. Defendants except to the order of the court denying the motion of defendant Rose to strike the testimony of Mr. Henry Immerman concerning the fact that his Retail Sales Tax Permit No. AS-17452 was used in the transaction by which Mr. Brown purchased some tires and that he was in the piano business.

23. The defendants except to the orders of the court refusing to strike the testimony of Mr. Storms, Mr. Foster, Mr. Henry Novisoff, Mr. Soukesian, John Dundos, Mr. Parsner, Frank Montgomery and Henry Immerman.

24. Defendants except to the order of the court denying the motion of defendant Rose to strike all of the testimony on the ground that it had nothing to do with Mr. Rose and was not connected up with him directly or indirectly.

25. Defendant Rose duly excepts to the order of the [301] court denying the motion of defendant Rose for a directed verdict of acquittal.

26. Defendant Vitagliano duly excepts to the order of the court denying the motion of defendant Vitagliano to strike Exhibit No. 30 and also the testimony with respect to the sale to Mr. Isenhower

of the thirty-six tubes by Rose and the admissions, declarations and statements by Foster wherein Vitagliano is mentioned and the statements of Mr. and Mrs. Humbert purportedly identifying Mr. Vitagliano at Ontario.

27. Defendant Vitagliano duly excepts to the order of the court denying the motion of Vitagliano for a directed verdict of not guilty.

28. Defendants except to the ruling of the court denying the motions in arrest of judgment.

29. Defendants except to the verdict of the jury and to the judgments and sentences pronounced.

MORRIS LAVINE,

Attorney for Appellants. [302]

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Thereafter the following stipulation was entered into:

In the United States Circuit Court of Appeals  
for the Ninth Circuit

No. 10445

BENJAMIN ROSE and LOUIS VITAGIALNO,  
Appellants,

v.

UNITED STATES OF AMERICA,

Appellee.

### STIPULATION

Whereas, the Government's and the defendant's exhibits in evidence in the above entitled action,

which are on file in the office of the Clerk of the United States District Court, Southern District of California, Central Division, are in many instances very difficult, and in some cases impossible, to reproduce either by typewriting or by printing, and

Whereas, the exhibits contain matters, which both parties desire the Court to see in their original form, and

Whereas, some of said exhibits contain notations in the handwriting of various persons which both parties believe should be certified directly to the United States Circuit Court of Appeals for the Ninth Circuit by the District Court for the purposes of this appeal, and

Whereas, there are photographs among said exhibits in [304] evidence, and

Whereas, both the appellants and appellee desire to avoid the expense of copying and re-photographing all of these bodily into the Bill of Exceptions, and the expense of reproducing said photographs in the printing thereof.

Now, Therefore,

It Is Hereby Stipulated and Agreed by and between the appellants, Benjamin Rose and Louis Vitagliano, and the appellee, United States of America, by and through their respective attorneys, subject, nevertheless to the approval of the United States Circuit Court of Appeals for the Ninth Circuit, as follows:

1. That each and all of the hereinafter mentioned and designated exhibits in evidence, which



are herein referred to respectively by the numbers given them by the Clerk of said District Court at the time of the trial herein, may be deemed by reference to be incorporated in the Bill of Exceptions both generally and respectively where and wherever references are made to them by such numbers in the body and context of said Bill of Exceptions to the same effect and purport as though each and all of said exhibits were fully set forth, word for word, figure for figure, and picture for picture in said Bill of Exceptions;

2. That the District Court may, after passing upon appellee's proposed amendments thereto, sign and settle said Bill of Exceptions, and may include therein a copy of this [305] stipulation in lieu of including therein, either in substance or in full, copies of each and all of the hereinafter designated exhibits in evidence, and that thereupon, each of said exhibits shall be deemed to be included in said Bill of Exceptions to the same effect and purport as though each and all of said exhibits were fully set forth therein as aforesaid;

3. That the exhibits to be so included are as follows:

Government's Exhibit 2

“ “ 3

“ “ 4

“ “ 5

“ “ 6

“ “ 7

“ “ 8

“ “ 9

Government's Exhibit 10

“ “ 11

“ “ 12

“ “ 13

“ “ 14

“ “ 15

“ “ 16

“ “ 17

“ “ 18

“ “ 19

[306]

“ “ 20

“ “ 21

“ “ 21-A

“ “ 22

“ “ 23

“ “ 26

“ “ 27

“ “ 28

“ “ 30

“ “ 32

5. That the United States District Court in and for the Southern District of California may make an order that all of the foregoing designated exhibits be sent to the United States Circuit Court of Appeals for the Ninth Circuit, and for the safe-keeping, transportation, and return thereof, at the cost of the appellants, to be paid to the Clerk of said District Court upon demand:

6. This stipulation in no wise constitutes a waiver of any objections and exceptions to the introduction of any exhibits by the District Court.

Dated: Feb. 2, 1944.

CHARLES H. CARR

United States Attorney

JAMES M. CARTER

Asst. United States Attorney

ERNEST A. TOLIN

Asst. United States Attorney

MORRIS LAVINE

Attorney for Appellants

It Is So Ordered:

ALBERT LEE STEPHENS

Judge of the United States

Circuit Court of Appeals

for the Ninth Circuit [307]

Thereafter the following order was made by the  
United States District Court:

In the District Court of the United States in and  
for the Southern District of California, Cen-  
tral Division.

No. 15881

BENJAMIN ROSE and LOUIS VITAGLIANO,  
Defendants and Appellants,

v.

UNITED STATES OF AMERICA,  
Plaintiff and Appellee.

### STIPULATION

Upon stipulation of the parties, which has been  
approved by the United States Circuit Court of



Appeals for the Ninth Circuit, it is ordered that the clerk of the Court transmit to the United States Circuit Court of Appeals for the Ninth Circuit, together with this Bill of Exceptions, the following Government's Exhibits which are hereby incorporated into this Bill of Exceptions by this reference thereto. Said Exhibits are as follows:

Government's Exhibit No. 2

"	"	"	3
"	"	"	4
"	"	"	5
"	"	"	6
"	"	"	7 [308]
"	"	"	8
"	"	"	9
"	"	"	10
"	"	"	11
"	"	"	12
"	"	"	13
"	"	"	14
"	"	"	15
"	"	"	16
"	"	"	17
"	"	"	18
"	"	"	19
"	"	"	20
"	"	"	21
"	"	"	21-A
"	"	"	22
"	"	"	23
"	"	"	26
"	"	"	27

Government's Exhibit No. 28

“ “ “ 30

“ “ “ 32

BEN HARRISON

United States District Judge

[309]

Plaintiff respectively represents that the foregoing Government's Proposed Amendments, including Corrections, Amplifications and Reductions To Bill of Exceptions are and each of them is necessary by way of amendments to Bill of Exceptions proposed by defendants in order that the said Bill of Exceptions be true and accurate.

Dated: February 7, 1944.

CHARLES H. CARR

United States Attorney

JAMES M. CARTER

Assistant United States At-  
torney

ERNEST A. TOLIN

Assistant United States At-  
torney [310]

The foregoing Bill of Exceptions has been examined and is approved.

Dated: This 27 day of March, 1944.

CHARLES H. CARR,

United States Attorney

By ERNEST A. TOLIN

Assistant United States At-  
torney

Attorneys for the Govern-  
ment-Plaintiff

MORRIS LAVINE

By MILTON B. [Illegible]

Attorney for Defendant [311]

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In the District Court of the United States, South-  
ern District of California, Central Division

No. 15811

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BENJAMIN ROSE and LOUIS VITAGLIANO,  
Defendants.

### ORDER APPROVING BILL OF EXCEPTIONS

An order approving the Bill of Exceptions hav-  
ing been presented to this Court and having been  
amended to correspond with the facts, is now set-  
tled, signed, and made a part of the records within  
the term and within the time fixed by the United



States Circuit Court of Appeals for the Ninth Circuit.

Dated: March 28 1944.

BEN HARRISON

United States District Judge

[311a]

Received copy of the within Bill of Exceptions this 18th day of December, 1943.

CHARLES H. CARR

United States Attorney

By MARY WENTWORTH

[Endorsed]: Lodged Dec. 18, 1943. Edmund L. Smith, Clerk, by Irwin Hames, Deputy Clerk.

[Endorsed]: Filed March 29, 1944. Edmund L. Smith, Clerk, by Theodore Hocke, Deputy Clerk.

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In the District Court of the United States, Southern District of California, Central Division

No. 15811

UNITED STATES OF AMERICA,

Plaintiff and Appellee,

vs.

BENJAMIN ROSE and LOUIS VITAGLIANO,  
Defendants and Appellants.

### ASSIGNMENTS OF ERROR

The aggrieved by the decision, determination, judgment and proceedings had in the District

Court of the United States, Southern District of California, Central Division, Louis Vitagliano and Benjamin Rose, appellants herein, assign the following errors in the proceedings and trial and judgments against them which they and each of them aver occurred prior to and during the trial of the cause; said errors and each of them are to the great detriment, prejudice and injury of the defendants and appellants and in violation of the rights conferred upon them and each of them, by the Constitution and Statutes of the United States of America. Said errors are as follows:

#### ASSIGNMENTS OR ERROR

The appellants assign the following errors in the record:

1. The District Court of the United States erred in its decision overruling the defendants' demurrers to the indictments on each of the grounds therein specified.

2. The District Court erred in its decision in denying the motions for a bill of particulars.

3. The District Court erred in its decision that the indictment in Count I thereof states a public offense in violation of the Second War Powers Act.

4. The District Court erred in holding that any crime was created by any executive decree.

5. The District Court erred in its decision in holding that the evidence was sufficient to justify the verdict.

6. The District Court erred in denying the motions of the defendants for a directed verdict.

7. The District Court erred in its decision denying the defendant Benjamin Rose a continuance on account of his physical condition. The District Court denied said Benjamin Rose a fair trial guaranteed by the Fifth Amendment to the Constitution of the United States.

8. The District Court erred in admitting evidence illegally seized and used in the trial in violation of the Fourth and Fifth Amendments to the Constitution of the United States.

9. The District Court erred in failing to arrest judgment on the grounds that evidence illegally seized had been used in evidence in violation of the Fourth and Fifth Amendments to the Constitution of the United States.

10. The District Court erred in denying motions in arrest of judgment on the grounds that the indictment failed to state a public offense.

11. The District Court erred in denying the motions in arrest of judgment on the grounds that the indictment was too vague, indefinite and uncertain to state the nature and cause of accusation and in failing to allege the necessary particulars as to any alleged conspiracy.

12. The District Court erred in holding that the evidence was sufficient to support a charge of conspiracy.

13. The District Court erred in failing to hold that the statute was unconstitutional.

14. The District Court erred in denying the defendants' motion that the indictment was in violation of due process of law guaranteed by the Fifth



Amendment to the Constitution of the United States.

15. The District Court erred in overruling defendants' objection that the indictment was in violation of the Sixth Amendment to the Constitution of the United States.

16. The District Court erred in each and every particular to which exception was taken as set forth in appellants' exceptions and which are herein incorporated by reference; appellants assign as error each and every matter, particular, ruling, and decision upon which an exception is based and which is not hereinbefore specifically mentioned.

Which errors were duly and regularly excepted to and for which errors the appellants and each of them pray for a reversal of the judgments.

MORRIS LAVINE

Attorney for Appellants

Received copy of the within Assignments of Error this 18th day of December 1943.

CHARLES H. CARR

United States Attorney

By MARY WENTWORTH

[Endorsed]: Filed Dec. 18, 1943. Edmund L. Smith, Clerk. By Irwin Hames, Deputy Clerk.

[Endorsed]: Filed Apr. 12, 1944. Paul P. O'Brien, Clerk.

[Endorsed]: No. 10445. United States Circuit Court of Appeals for the Ninth Circuit. Benjamin Rose and Louis Vitagliano, Appellants, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed May 28, 1943.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

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At a Stated Term, to wit: The October Term 1942, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Monday the fourteenth day of June in the year of our Lord one thousand nine hundred and forty-three.

Present:

Honorable William Denman, Circuit Judge,  
Presiding,

Honorable Clifton Mathews, Circuit Judge,

Honorable Healy, Circuit Judge.

No. 10,445

BENJAMIN ROSE and LOUIS VITAGLIANO,  
Appellants,

vs.

UNITED STATES OF AMERICA,  
Appellee.

ORDER GRANTING APPLICATION OF AP-  
PELLANTS FOR ADMISSION TO BAIL  
PENDING APPEAL

Upon consideration of the Motion of the appellants, filed May 28, 1943, for admission to bail pending appeal, and good cause therefor appearing, it is Ordered that each of the appellants in the above-entitled cause be, and hereby is admitted to bail in the sum of \$1000.00, bond to be approved by the United States Attorney for the Southern District of California, and by a Judge of this Court.



In the Circuit Court of Appeals of the United  
States for the Ninth Circuit

No. 10445

BENJAMIN ROSE and LOUIS VITAGLIANO,  
Appellants,

vs.

THE UNITED STATES OF AMERICA,  
Appellee.

DESIGNATION OF PARTS OF RECORD TO  
BE PRINTED AND POINTS TO BE RE-  
LIED ON

Come now the appellants herein and designate the  
whole of the record to be printed on appeal, as  
necessary to their appeal.

Appellants further adopt as points to be relied  
upon each and all of the points set out in the as-  
signment of errors.

MORRIS LAVINE

Attorney for Appellants

[Endorsed]: Filed April 24, 1944. Paul P.  
O'Brien, Clerk.



No. 10445.

IN THE

United States Circuit Court of Appeals  
FOR THE NINTH CIRCUIT

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BENJAMIN ROSE and LOUIS VITAGLIANO,

*Appellants,*

*vs.*

UNITED STATES OF AMERICA,

*Appellee.*

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STATEMENT OF JURISDICTION.

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MORRIS LAVINE,

619 Bartlett Building, Los Angeles 14,

*Attorney for Appellants.*

FILED

SEP 11 1944

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No. 10445.

IN THE

United States Circuit Court of Appeals  
FOR THE NINTH CIRCUIT

---

BENJAMIN ROSE and LOUIS VITAGLIANO,

*Appellants,*

*vs.*

UNITED STATES OF AMERICA,

*Appellee.*

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STATEMENT OF JURISDICTION.

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A.

Jurisdiction is sustained in this case by reason of Title 28, Section 225, U. S. Codes.

B.

Questions Raised by This Appeal.

1. Does an indictment charge the offense of conspiracy under Title 18, Section 88, to violate the Second War Powers Act approved March 27, 1942, where the statute was approved March 27, 1942, and the conspiracy is alleged to have occurred on or about December 12, 1941?

2. Does an indictment charge an offense against the laws of the United States where it charges violation of the statute, executive orders, regulations and directives hereinbefore referred to [R. 78] without setting forth

the forbidden part of the statute or the executive orders, regulations or directives alleged to have been violated?

3. Where a statute is so vague, indefinite and uncertain as not to specify the conduct which is forbidden or allowed, can that statute be supplemented by regulations? Can a crime be established by regulations or does this constitute an unconstitutional assumption by the executive department of the functions of Congress?

4. Where a regulation provides that it shall apply to certain persons and not to other persons, does the indictment which fails to set out whether or not the regulation is or is not applicable, state an offense against the laws of the United States?

5. Can an indictment merely refer to statutes or regulations by reference and still constitute an offense against the laws of the United States?

6. Where acts are charged against dealers in rubber tires who were permitted by law to deal with each other, would an indictment state an offense against the laws of the United States which did not show clearly that the dealers' conduct was clearly not within the provisions of the regulation?

7. Where a statute, to-wit, the Second War Powers Act, fixes no penalty for a violation of a regulation, does it constitute an offense against the laws of the United States?

8. Should the court have directed the verdict in behalf of the defense in view of the fact that all of the evidence shows transactions between dealers, one with each other except one single transaction which was had by one person as an individual with one other person?

9. Should the court have struck irrelevant testimony set out in the motions to strike?

10. Should the court have granted the motions and arrested judgment on the grounds that the indictment is too vague, indefinite and uncertain as to the nature and cause of the accusations (2) on the ground that evidence illegally seized was used in evidence in violation of the Fourth and Fifth Amendments to the Constitution of the United States; (3) that the evidence does not support a conviction to commit offense against the United States?

### C.

#### Statutes Involved.

Subsection (a) of Section 2 of Title III of Public Law 507, 77th Congress, approved March 27th, 1942, and commonly known as the Second War Powers Act

#### TITLE III—PRIORITIES POWERS

Sec. 301. Subsection (a) of section 2 of the Act of June 28, 1940 (54 Stat. 676), entitled "An Act to expedite national defense, and for other purposes," as amended by the Act of May 31, 1941 (Public Law Numbered 89, Seventy-seventh Congress), is hereby amended to read as follows:

"Sec. 2. (a) (1) That whenever deemed by the President of the United States to be in the best interests of the national defense during the national emergency declared by the President on September 8, 1939, to exist, the Secretary of the Navy is hereby authorized to negotiate contracts for the acquisition, construction, repair, or alteration of complete naval vessels or aircraft, or any portion thereof, including plans, spare parts, and equipment therefor, that have been or may be authorized, and also for machine tools



and other similar equipment, with or without advertising or competitive bidding upon determination that the price is fair and reasonable. Deliveries of material under all orders placed pursuant to the authority of this paragraph and all other naval contracts or orders and deliveries of material under all Army contracts or orders shall, in the discretion of the President, take priority over all deliveries for private account or for export: *Provided*, That the Secretary of the Navy shall report every three months to the Congress the contracts entered into under the authority of this paragraph: *Provided further*, That contracts negotiated pursuant to the provisions of this paragraph shall not be deemed to be contracts for the purchase of such materials, supplies, articles, or equipment as may usually be bought in the open market within the meaning of section 9 of the Act entitled 'An Act to provide conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes,' approved June 30, 1936 (49 Stat. 2036; U. S. C., Supp. V, title 41, secs. 35-45): *Provided further*, That nothing herein contained shall relieve a bidder or contractor of the obligation to furnish the bonds under the requirements of the Act of August 24, 1935 (49 Stat. 793; 40 U. S. C. 270 (a) to (d)): *Provided further*, That the cost-plus-a-percentage-of-cost system of contracting shall not be used under the authority granted by this paragraph to negotiate contracts; but this proviso shall not be construed to prohibit the use of the cost-plus-a-fixed-fee form of contract when such use is deemed necessary by the Secretary of the Navy: *And provided further*, That the fixed fee to be paid the contractor as a result of any contract entered into under the authority of this paragraph, or any War Department contract entered into in the form of cost-

plus-a-fixed-fee, shall not exceed 7 per centum of the estimated cost of the contract (exclusive of the fee as determined by the Secretary of the Navy or the Secretary of War, as the case may be).

“(2) Deliveries of material to which priority may be assigned pursuant to paragraph (1) shall include, in addition to deliveries of material under contracts or orders of the Army or Navy, deliveries of material under—

“(A) Contracts or orders for the government of any country whose defense the President deems vital to the defense of the United States under the terms of the Act of March 11, 1941, entitled ‘An Act to promote the defense of the United States’;

“(B) Contracts or orders which the President shall deem necessary or appropriate to promote the defense of the United States;

“(C) Subcontracts or suborders which the President shall deem necessary or appropriate to the fulfillment of any contract or order as specified in this subsection (a).

Deliveries under any contract or order specified in this subsection (a) may be assigned priority over deliveries under any other contract or order; and the President may require acceptance of and performance under such contracts or orders in preference to other contracts or orders for the purpose of assuring such priority. Whenever the President is satisfied that the fulfillment of requirements for the defense of the United States will result in a shortage in the supply of any material or of any facilities for defense or for private account or for export, the President may allocate such material or facilities in such manner, upon

such conditions and to such extent as he shall deem necessary or appropriate in the public interest and to promote the national defense.

“(3) The President shall be entitled to obtain such information from, require such reports and the keeping of such records by, make such inspection of the books, records, and other writings, premises or property of, any person (which, for the purpose of this subsection (a), shall include any individual, partnership, association, business trust, corporation, or any organized group of persons, whether incorporated or not), and make such investigations, as may be necessary or appropriate, in his discretion, to the enforcement or administration of the provisions of this subsection (a).

“(4) For the purpose of obtaining any information, verifying any report required, or making any investigation pursuant to paragraph (3), the President may administer oaths and affirmations, and may require by subpoena or otherwise the attendance and testimony of witnesses and the production of any books or records or any other documentary or physical evidence which may be relevant to the inquiry. Such attendance and testimony of witnesses and the production of such books, records, or other documentary or physical evidence may be required at any designated place from any State, Territory, or other place subject to the jurisdiction of the United States: *Provided*, That the production of a person's books, records, or other documentary evidence shall not be required at any place other than the place where such person resides or transacts business, if, prior to the return date specified in the subpoena issued with respect thereto, such person furnishes the President with a true copy of such books, records, or other docu-



mentary evidence (certified by such person under oath to be a true and correct copy) or enters into a stipulation with the President as to the information contained in such books, records, or other documentary evidence. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. No person shall be excused from attending and testifying or from producing any books, records, or other documentary evidence or certified copies thereof or physical evidence in obedience to any such subpoena, or in any action or proceeding which may be instituted under this subsection (a), on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be subject to prosecution and punishment or to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled to testify or produce evidence, documentary or otherwise, after having claimed his privilege against self-incrimination, except that any such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. The President shall not publish or disclose any information obtained under this paragraph which the President deems confidential or with reference to which a request for confidential treatment is made by the person furnishing such information, unless the President determines that the withholding thereof is contrary to the interest of the national defense and security; and anyone violating this provision shall be guilty of a felony and upon conviction thereof shall be fined not exceeding \$1,000, or be imprisoned not exceeding two years, or both.

“(5) Any person who willfully performs any act prohibited, or willfully fails to perform any act re-

quired by, any provision of this subsection (a) or any rule, regulation, or order thereunder, whether heretofore or hereafter issued, shall be guilty of a misdemeanor, and shall, upon conviction, be fined not more than \$10,000 or imprisoned for not more than one year, or both.

“(6) The district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States and the courts of the Philippine Islands shall have jurisdiction of violations of this subsection (a) or any rule, regulation, or order or subpoena thereunder, whether heretofore or hereafter issued, and of all civil actions under this subsection (a) to enforce any liability or duty created by, or to enjoin any violation of, this subsection (a) or any rule, regulation, order, or subpoena thereunder whether heretofore or hereafter issued. Any criminal proceedings on account of any such violation may be brought in any district in which any act, failure to act, or transaction constituting the violation occurred. Any such civil action may be brought in any such district or in the district in which the defendant resides or transacts business. Process in such cases, criminal or civil, may be served in any district wherein the defendant resides or transacts business or whenever the defendant may be found; and subpoena for witnesses who are required to attend a court in any district in any such case may run into any other district. No costs shall be assessed against the United States in any proceeding under this subsection (a).

“(7) No person shall be held liable for damages or penalties for any default under any contract or order which shall result directly or indirectly from compliance with this subsection (a) or any rule, regulation,

or order issued thereunder, notwithstanding that any such rule, regulation, or order shall thereafter be declared by judicial or other competent authority to be invalid.

“(8) The President may exercise any power, authority, or discretion conferred on him by this subsection (a), through such department, agency, or officer of the Government as he may direct and in conformity with any rules or regulations which he may prescribe.”\*

Title 18, U. S. C., Section 88, as follows: Amendment No. 1 to Supplementary Order No. M-15-B to Restrict the Use of Rubber.

#### Statutes Believed to Support Jurisdiction.

Title 28, Section 225.

Respectfully submitted,

MORRIS LAVINE,

*Attorney for Appellants.*

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\*Appellant has sent to Washington to get copies of the various regulations and statutes referred to in the indictment (pp. 73-81) but has been unable to get copies of them except the Second War Powers Act. It is assumed that the Government will be able to supply the missing statutes and regulations for the Court.





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*Appellee.*

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## OPENING BRIEF ON APPEAL.

---

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*Appellants,*

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UNITED STATES OF AMERICA,

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## OPENING BRIEF ON APPEAL.

---

This is an appeal from judgments of conviction of Benjamin Rose and Louis Vitagliano of "conspiracy to commit offense against the United States, that is to say, to sell, lease, ship and transfer new rubber tires, casings and tubes to consumers and other persons in violation of statute [R. 78], executive orders, regulations and directives hereinbefore referred to."

The statute referred to was Subsection (a) of Section 2 of Title III of Public Law 507, 77th Congress, approved March 27, 1942, and commonly known as the Second War Powers Act. [R. 77.]

On February 11, 1942, the said Office of Price Administration made,<sup>1</sup> issued and duly promulgated "Tire Ra-

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<sup>1</sup>The Office of Price Administration was not created by the Second War Powers Act. It is authorized by the Emergency Price Control Act of 1942.

tioning Regulations (Revised)," effective February 19, 1942, and superseding Tire Rationing Regulations theretofore issued on December 30, 1941, which said regulations, effective February 19, 1942, prohibited the sale, lease, loan, trade, shipment, delivery or transfer of new rubber tires and tubes or of retreaded or recapped rubber tires without certificates issued by local tire rationing boards and except as otherwise provided in said regulations. Said regulations were issued under Subsection (a) of Section 2 of Title III of Pub. L. 507, 77th Cong., approved March 27, 1942, and commonly known as the Second War Powers Act.

Appellants were dealers and service station men and had a lawful right to handle tires with each other. It will be shown that they did not conspire to violate any of the regulations. The defendant Rose was sentenced to a year and a day in a penitentiary type of institution, and fined the sum of \$2,000. [R. 21.] He was at the time of his trial in the Coast Guard of the United States and had suffered a serious injury which required him to sit through the trial with his leg propped up. The defendant Vitagliano was given a sentence of six months in the County Jail and fined \$1,000. [R. 22, 23.]

As the facts will be more fully stated under the heading of the Court's error in failing to direct the verdict, no extended statement will here be set forth.

A complete summary of the testimony is contained in an appendix for the purpose of considering the sufficiency of the evidence.

The appellants assign the following errors in the record:

I.

The District Court erred in its decision overruling the defendants' demurrers to the indictment on each of the grounds therein specified.

(a) The indictment is fatally defective in charging a conspiracy to violate the Second War Powers Act of 1942, passed on *March 27, 1942*, wherein it alleges that the conspiracy to violate that Act occurred on *December 12, 1941*.

(b) The indictment is fatally defective in alleging violations of regulations purportedly issued under the Second War Powers Act, which regulations were issued *prior* to the Second War Powers Act.

(c) The indictment is fatally defective in referring merely to the statute and not charging what act or omission was in violation of the statute.

(d) The indictment is fatally defective in failing to specify the particular conduct which it is alleged was forbidden by any applicable regulation and in failing to descend to particulars as required by the Sixth Amendment to the Constitution of the United States.

(e) The indictment is fatally defective in that it fails to negative the exceptions in the regulations, which exceptions were applicable to the defendants, who were dealers and exempt under the regulations.

(f) The indictment is fatally defective in merely referring to statutes and regulations generally and by reference and without setting forth the provisions of the statutes and the regulations.



II.

The indictment fails to state an offense against the laws of the United States.

III.

The District Court erred in refusing a bill of particulars.

IV.

The District Court erred in failing to direct a verdict.

V.

The District Court erred in failing to grant the motions to strike the evidence.

VI.

The District Court erred in failing to grant the motions and arrest the judgment.

(a) For failure to state an offense against the laws of the United States.

(b) For all of the defects set up in the grounds of the demurrer.

(c) For violation of the Fourth and Fifth Amendments to the Constitution of the United States.

VII.

The Second War Powers Act is too vague, indefinite and uncertain to form a standard of penal conduct and therefore violates the Fifth Amendment to the Constitution of the United States.

VIII.

The District Court erred in overruling the motions in arrest of judgment.

I.

**The District Court Erred in Overruling the Demurrer  
to the Indictment.**

A. The indictment charges the appellants with violating Subdivision (a) of Section 2 of Title 3, Public Law 507; 77th Congress, approved March 27, 1942, and commonly known as the "Second War Powers Act."

The offense of conspiracy is alleged to have taken place December 12, 1941, or more than a year and two months before the passage of the Act. Also, the indictment charges that the regulations were issued under the Second War Powers Act [R. 77], when, as a matter of fact, the Second War Powers Act had not yet passed and the regulations referred to are dated February 11, 1942, February 19, 1942, and December 30, 1941. [R. 77, referring to Section 12 in the indictment.]

In *United States v. Eaton*, 144 U. S. 677, 688, 36 L. Ed. 591, 592, 593, the court held that the Secretary of the Treasury cannot buy his regulations, alter or amend a revenue law; all he can do is to regulate the mode of the proceeding to carry into effect what Congress has enacted, and he has no authority to prescribe a regulation which would substantially prescribe a criminal offense by the regulation of the Department.

See also the following cases:

*St. Louis Merchants Bridge T. Railroad Co. v. United States* (8th Cir.), 188 Fed. 191;

*United States v. Maid*, 116 Fed. 650;

*United States v. Ballard*, 12 Fed. Supp. 321;

*Schechter v. United States*, 295 U. S. 495, 79 L. Ed. 1570;

*United States v. Louisville & N. R. Co.*, 176 Fed. 942;

*Asgill v. United States*, 60 Fed. (2d) 780.

B. The indictment does not state an offense against the laws of the United States in that it is too vague, indefinite and uncertain to apprise the accused of the specific thing with which they are charged.

The references to the orders are general. The references to the alleged conduct or misconduct are too vague and general.

*Constitution of the United States*, Sixth Amendment;

*U. S. v. Cruikshank*, 92 U. S. 542, 23 L. Ed. 588, Fed. Case 14455. 2 Paine 451;

*U. S. v. Simmons*, 96 U. S. 360, 24 L. Ed. 819;

*U. S. v. Hess*, 124 U. S. 483, 31 L. Ed. 516;

*U. S. v. Carll*, 105 U. S. 641, 26 L. Ed. 1135;

*U. S. v. Standard Brewery*, 251 U. S. 210, 64 L. Ed. 229;

*U. S. v. Morrissey*, 32 Fed. 147;

*U. S. v. Reichert*, 32 Fed. 142;

*Wishart v. U. S.* (8th Cir.), 29 Fed. (2d) 103;

*Peters v. U. S.*, 94 Fed. 127;

*Olmstead v. U. S.*, 29 Fed. (2d) 239;

*Brenner v. U. S.*, 287 Fed. 636;

*Shaw v. U. S.*, 292 Fed. 339;

*Haynes v. U. S.*, 4 Fed. (2d) 889;

*Lynch v. U. S.*, 10 Fed. (2d) 947;  
*Asgill v. U. S.*, 60 Fed. (2d) 780 and cases there-  
in cited;  
*Kerns v. U. S.*, 74 Fed. (2d) 251;  
*Pierce v. U. S.*, 86 Fed. (2d) 949;  
*Reimer-Gross Co. v. U. S.*, 20 Fed. (2d) 36;  
*U. S. v. Strobach*, 28 Fed. 902;  
*U. S. v. Brazeau*, 78 Fed. 464;  
*Azuma Kubo v. U. S.*, 31 Fed. (2d) 88;  
*Martin v. U. S.*, 168 Fed. 198;  
*Ackley v. U. S.*, 200 Fed. 217;  
*U. S. v. Bopp*, 230 Fed. 723;  
*Boykin v. U. S.*, 11 Fed. (2d) 484;  
*U. S. v. Cowell*, 243 Fed. 730;  
*U. S. v. Louisville & N. R. Co.*, 165 Fed. 936;  
*Hall v. U. S.*, 89 Fed. (2d) 578;  
*Harris v. U. S.*, 104 Fed. (2d) 41.

C. The indictment states facts which all could be innocent, as the defendants were authorized dealers in tires and under O.P.A. Section 801 a retailer may, without certificate, transfer any new tires or tubes to any retailer, distributor, wholesaler or manufacturer.

Under the Sixth Amendment to the United States Constitution a defendant is entitled to be informed of the nature and cause of the accusation so that the court may know if an offense has been charged in the first instance. Where, by the language of an indictment the defendant may or may not be innocent, the presumption of innocence prevails, and no public offense is charged. If under the



language of the indictment the defendants could have done each and all of the things charged without being in violation of any law, no public offense against the laws of the United States is charged.

*People v. Schmitz*, 7 Cal. App. 330;

*People v. Davenport*, 21 Cal. App. (2d) 292.

Count I of the indictment was insufficient in that the statute executive orders, regulations and/or directives referred to contain numerous *exceptions* which are so incorporated in the language defining the conduct that the ingredients of the conduct cannot be accurately described because the exceptions are omitted. It is a well-known rule of criminal law that where exceptions are a part of the definition of an offense they must be pleaded.

*U. S. v. Cook*, 84 U. S. 168, 21 L. Ed. 538;

*Reing v. U. S.*, 84 Fed. (2d) 624.

Count I of the indictment was insufficient in that it failed to allege whether any of the defendants were retailers, distributors, wholesalers or manufacturers, as defined by Supplementary Order M-15-C. Without such allegations the indictment did not state an offense, and the defendants were entitled to be informed specifically by the indictment whether they were in the forbidden category.

*U. S. v. Cook*, 84 U. S. 168, 21 L. Ed. 538.

D. The indictment failed to allege whether or not the defendant Rose was a retailer, distributor, wholesaler or manufacturer within the meaning and purview of Supplementary Order M-15-C, Subdivision 4, which permitted selling, leasing, trading, lending, delivering, shipping and transferring of new tires, casings and tubes by any re-

tailer to another retailer or to any distributor, wholesaler or manufacturer.

The indictment also failed to allege the specific regulations which it is alleged were the object of the conspiracy.

Such omissions vitiate the indictment.

*U. S. v. Cruikshank*, 92 U. S. 542, 23 L. Ed. 588;

*Asgill v. U. S.*, 60 Fed. (2d) 780;

*U. S. v. Louisville & N. R. Co.*, 176 Fed. 942;

*Schechter v. U. S.*, 295 U. S. 495, 79 L. Ed. 1570;

*United States Constitution*, Article I, Sections 1 and 8;

*U. S. v. Eaton*, 144 U. S. 677, 36 L. Ed. 591.

The Second War Powers Act fails to define a crime with definiteness and certainty, and therefore is violative of the Fifth Amendment to the Constitution of the United States.

*U. S. v. Reese*, 92 U. S. 214;

*Conally v. General Const. Co.*, 269 U. S. 385, 7 L. Ed. 322;

*Lanzetta v. New Jersey*, 306 U. S. 457;

*U. S. v. 11,150 Pounds of Butter*, 195 Fed. 657;

*U. S. v. Resnick*, 299 U. S. 207, 81 L. Ed. 127.

E. The Second War Powers Act does not contain any penal provisions relating to the matters herein charged. In every crime there must be conduct defined and a punishment provided.

*U. S. v. Seibert*, 2 Fed. (2d) 80;

*U. S. v. Resnick*, 299 U. S. 207, 81 L. Ed. 127;

*People v. McNulty*, 93 Cal. 427;

*In re Ellsworth*, 165 Cal. 677;

*U. S. Ballard*, 12 Fed. Supp. 321, and cases therein cited at 327.

For each of the foregoing reasons the demurrer to the indictment and the motions in arrest of judgment should have been sustained.

### The Indictment Fails to State a Public Offense.

The instant indictment fails to state any offense known to the law. It is totally deficient in its attempt to charge a crime for the following reasons:

1. It is vague, uncertain and indefinite to the degree that it fails to inform the accused of the nature of the charge against them or to identify the offense attempted to be charged.

2. It shows on its face that the defendants are, if the allegations contained therein are true, innocent of any and all offenses attempted or purported to be set forth in said indictment.

The second ground will be first discussed and elucidated.

In the body of the indictment, a fraudulent conspiracy to violate certain laws is charged as the aim and purpose of the alleged conspirators.

First reliance is placed on decisions which have been quoted or cited in the argument involving the insufficiency of the evidence to sustain the conviction (caption I). These decisions not only considered the evidence insufficient but held the respective indictments bad.

However, it will be shown that these decisions coincide with and lead back to leading cases which sustain ground 1, above set forth.

In other words, *United States v. Biggs*, 157 Fed. 264; *Tillingham v. Richards*, 275 Fed. 226, and *Fain v. United States*, 209 Fed. 525, is not a group of Mavericks in the statements of law, applicable only to the precise facts involved, but are examples of cases factually similar to the instant case which were controlled by long and well-settled principles of the criminal law.

The composite doctrine of these three decisions is grounded upon the rule that an indictment fails to state facts which permit proof of a public offense, where in the charging clause, a conspiracy to do an unlawful act, fraudulently, is alleged as the object, and lawful, innocent overt acts are set forth, without any averments in the body of the indictment, of fact which show a causal connection to give a fraudulent aspect to overt acts, which, as described, are lawful and innocent.

In that behalf *Tillingham v. Richards* relies upon *U. S. v. Britton*, 108 U. S. 199, 27 L. Ed. 199.

The charge in the *Britton* case was conspiracy to violate Section 5209 of the Revised Statutes (The National Bank Act). The indictment contained 119 counts.

Concerning counts 37 and the counts similar to it, the opinion shows that they charge conspiracy to do an unlawful act fraudulently. These counts were held "bad" because it is said, they do not fully and clearly set forth every element of the offense charged. It would not be sufficient simply to aver that the defendant "willfully misapplied" the funds of the association. There must be



averments to show how the application was made, and that it was an unlawful one. This is well settled by the authorities we have already cited.

Finally it is said:

“The failure of the counts under consideration to aver that the purchase of the shares of the association was not necessary to prevent loss upon a debt previously contracted in good faith is a fatal defect. These counts merely charge that the defendant willfully misapplied the funds of the association, and then aver a use of the funds which, from all that appears to the contrary, was a perfectly lawful application of them. The result is, that no offense is described in the counts numbered from 37 to 56, inclusive, and that they are, therefore, insufficient and bad.” (pp. 525, 526.)

The principal authorities above referred to as having been cited are *U. S. v. Simmons*, 96 U. S. 362 and *U. S. v. Carll*, 105 U. S. 611, and the excerpts quoted from these opinions merely state certain fundamental principles which condemn uncertainty in pleading.

From the *Simmons* opinion is quoted this language:

“\* \* \* there is a qualification fundamental in the law of criminal procedure, that the accused must be apprised in the indictment with reasonable certainty of the nature of the accusation against him, to the end that he may prepare his defense and plead the judgment as a bar to any subsequent prosecution against him.’”

From the *Carll* decision the following is quoted:

“‘In an indictment upon a statute, it is not sufficient to set forth the offense in the words of the

statute, unless those words of themselves fully, directly, and expressly, without any uncertainty or ambiguity, set forth all the elements necessary to constitute the offense intended to be punished; and the fact that the statute in question, read in the light of the common law and of other statutes on the like matter, enables the court to infer the intent of the Legislature, does not dispense with the necessity of alleging in the indictment all the facts necessary to bring the case within that intent.' ”

Thus the *Britton* case announces the exact principle and rule laid down in the *Fain*, *Biggs* and *Tillingham* cases and regards that rule and principle as warranted and required by a more general rule which is “fundamental to the law of criminal procedure.”

*United States v. Carll*, in turn, granted a motion in arrest of judgment on the jurisdictional ground that the averments of the indictment were insufficient to state an offense because its charging clause, being in the general language of the statute, omitted the essential element of intent to defraud and charged as a crime an act which was not unlawful, without an averment of further facts to show illegality, citing the famous decision in *U. S. v. Cruikshank*, 92 U. S. 582.

In the last named case the charge was conspiracy to do an unlawful act fraudulently. It employed the generic language of the law which made it unlawful to conspire to hinder a citizen in the free enjoyment of any right or privilege granted by the Federal Constitution.

It failed to specify what right or to plead facts showing the intent to prevent the enjoyment of such right.

The opinion declares "facts are to be stated and not conclusions of law alone" and it is said, "the indictment should state the particulars, to inform the court as well as the accused. It must be made to appear—that is to say, appear from the indictment, without going further—that the acts charged will, if proved, support a conviction for the offense charged."

With this background and lineage the *Tillingham*, *Fain* and *Biggs* decisions are, it seems, impregnable. They have applied the same rule which caused the Supreme Court in the *Cruikshank* and *Carll* cases to hold that a motion in arrest after conviction should have been granted where the body of the charge was defective to similar defects in the description of the overt acts. They show clearly and logically that conclusions alone were pleaded in the charging clause and that with no averments of causal connection the lawful overt acts set forth could not possibly "support a conviction for the offense charged," and that, as phrased in the *Carll* decision, without averments of showing illegality the lawful acts set forth as overt acts cannot enlarge the defective charge in the body of the indictment into an offense.

1. THE INDICTMENT FAILS TO CHARGE A PUBLIC OFFENSE BECAUSE IT IS VAGUE, UNCERTAIN AND INDEFINITE.

It is difficult to conceive of a more indefinite and uncertain charge than that contained in the instant indictment.

It reads:

"Beginning on or about December 12, 1941, and continuing thereafter up to and including the date of the return of this indictment, the defendants Mac



R. Brown, Joseph Lieb, Benjamin Rose, Phil Rezniche, Phil Taplin, Louis Vitagliano and Sam Weinstein, and other persons whose names are to the Grand Jurors unknown, in the County of Los Angeles, State of California, division and district aforesaid, did unlawfully, wilfully, knowingly, corruptly, fraudulently and feloniously engage in a conspiracy to commit offenses against the United States, that is to say, to sell, trade, lease, ship and transfer *new rubber tires, casings, and tubes to consumers* and other persons in violation of the statute, executive orders, regulations and directives hereinbefore referred to." (Italics ours.)

Several regulations and two directives and the entire act authorizing the creation of the OPA were "hereinbefore referred to." [R. 74-77.]

The charge is in the generic language of certain of these regulations and it is generic throughout.

It is conceivable that persons could conspire to violate *all* provisions of the statute and the directives and of the regulations of the OPA. However, the indictment does not so aver. It specifies that the accused conspired to do acts in violation of said instruments, but makes no attempt to specify what acts were planned to be done or to identify them.

This indictment violates fundamental rules of criminal procedure all based upon the general principal that the accusation must be so definite and certain that the defendant may know the precise offense with which he is charged so that he may prepare his defense and be protected from further prosecution for the same offense and to inform the court, so that it can determine whether an



offense is charged and, if so, what offense, and whether it is one over which the court has jurisdiction.

*Cruickshank v. U. S.*, 92 U. S. 542.

In *Armour Packing Co. v. U. S.*, 209 U. S. 56, it was said:

*Rosen v. U. S.*, 161 U. S. 29, 40 L. ed. 606;

*U. S. v. Carll*, 105 U. S. 611, 26 L. ed. 1135;

*U. S. v. Simmons*, 96 U. S. 360, 24 L. ed. 819.

The fundamental rules thus comprehended are stressed separately in the following groups of decisions:

1. In *Jarl v. U. S.*, 19 F. (2d) 851, it was held that an indictment which does not so identify the charge that the accused may not be *put on trial* for an offense other than the one covered in the indictment and so that he may be protected from being twice put in jeopardy is "fatally defective."

In *Anderson v. U. S.*, 260 Fed. 557, the indictment charged that defendant "unlawfully, etc., conspired" with others to commit an offense against the United States, that is, "to steal from a certain railway car certain goods then and there moving as a part of interstate shipment, with intent to convert said goods to their own use."

The demurrer on the ground that the indictment insufficiently described the alleged offense was overruled and in error, was reversed.

It was held that if the statute employs broad and comprehensive language descriptive of the general nature of the offense, the use of such language is insufficient to identify the offense attempted to be charged.

It is said:

“As the conspiracy is the gist of the offense, it is undoubtedly true that the offense which it is charged the defendant conspired to commit need not be stated with that particularity that would be required in an indictment charging the offense itself. Still, as was said in *Williamson v. U. S.*, 207 U. S. 447, the offense which the defendant conspired to commit must be identified.”

“Standing alone, we are of the opinion that the above-quoted language from the indictment wholly fails to comply with the rules of criminal pleading. The words ‘*certain railroad car*’ might apply to any one of the vast number of cars in existence in the United States; and for the same reason the words ‘*certain goods*’ might apply to any kind of the thousand varieties of property. The car might be moving in interstate commerce on any railroad in the United States and between any two of the great number of towns existing in different states. The *kind* and character of the goods are not stated. In order to constitute the crime of stealing, several elements must be established. The defendant, if convicted or acquitted on this indictment, could not plead the conviction or acquittal *in bar*, as far as the indictment is concerned, if he was again indicted for the same offense, because *the offense is not identified*. We are therefore clearly of the opinion that the charge of conspiracy is *fatally defective* when standing alone.”

The court further held that indictment cannot be aided by averments of overt acts done by one or more of the conspirators in furtherance of the object of the conspiracy.

2. Where an indictment pleads one or more of the essential elements of the crime attempted to be charged in generic language, it fails to state an offense.

*Sulla v. U. S.*, 104 Fed. 544 (9th Cir.);

*Keck v. U. S.*, 172 U. S. 435; 42 Fed. 505;

*Hess v. U. S.*, 124 U. S. 483, 31 L. ed. 516;

*U. S. v. Robinson*, 266 F. 240.

(a) Such generic language states no matters on which an issue could be submitted to a jury.

*Keck v. U. S.*, 172 U. S. 435;

*Hess v. U. S.*, 124 U. S. 483.

(b) Such an indictment denies the accused the right guaranteed by the Fifth Amendment to be protected against double jeopardy. It violates the right to be informed of the nature of the charge, guaranteed by the Sixth Amendment. The protection thus afforded begins back of the trial and with the indictment and renders all that follows nugatory.

*U. S. v. Cruickshank*, 92 U. S. 542;

*Nielson v. U. S.*, 131 N. S. 176;

*Bens v. U. S.*, 226 Fed. 152;

*U. S. v. Taffee*, 86 Fed. 113.

(c) Such an indictment states "No offense known to the law."

*Hess v. U. S.*, 124 U. S. 483, 31 L. ed. 516;

*Boykin v. U. S.*, 11 F. (2d) 484;

*Shaw v. U. S.*, 292 Fed. 339.

(d) Such an indictment is a nullity and is "dead."

*Foster v. U. S.*, 253 Fed. 481 (9th Cir.);

*Hess v. U. S.*, *supra*.

(e) Under an indictment which pleads the charge in generic language, only, the court is wholly without jurisdiction over the subject matter.

*U. S. v. Rogoff*, 163 Fed. 311.

(f) The defect is one of substance and not merely of form. It goes to the very life of the indictment.

*U. S. v. Ford*, 34 Fed. 26;

*Jarl v. U. S.*, 19 F. (2d) 891.

If these are the consequences which result from pleading in generic terms and failing to “descend to particulars” where conspiracy to violate congressional acts is charged, by what process of reasoning can it be held that directives and administrative regulations, created solely through delegated authority are immune and exempt, and may be made the basis of prosecutions in defiance of constitutional restrictions? The Government is invited to supply the answer.

In the past it seems that prosecutors have sought to avoid the effect of the fundamental rules above set forth by arguing that a bill of particulars would supply the defects in the indictment.

To that contention it was said in *Foster v. U. S.*, 253 Fed. 481 (9th Cir.):

“The bill of particulars could not avail to cure the defect of the indictment. It does not constitute a part of the record and it is not subject to demurrer.



Not having been made by a grand jury on oath, it cannot cure the omission of material averments from an indictment, and it cannot 'give life to what was dead when it left the grand jury.' ”

In *United States v. Dowling*, 278 Fed. 630, the court observed:

If the indictment is good against general demurrer the defendant may resort to a motion for a bill of particulars, “If, however, it is bad, the remedy is by demurrer or by motion in arrest of judgment.”

To the same effect, see:

*Jarl v. U. S.*, 19 F. (2d) 891.

## II.

### The District Court Erred in Denying the Defendants' Motions for a Bill of Particulars.

The defendants moved for a bill of particulars [R. 83, 84] which motions were denied and exceptions noted. They were entitled to a bill of particulars because of the multiplicity of regulations and their right to know what they were charged with having violated so that they could be prepared to meet the charges. The refusal to grant the bill of particulars was an abuse of discretion on the part of the court.

*Glasser v. U. S.*, 86 L. Ed. 680;

*Bartell v. U. S.*, 227 U. S. 427, 57 L. Ed. 583;

*Durland v. U. S.*, 161 U. S. 306, 316, 40 L. Ed. 709.

III.

**The District Court Erred in Denying the Defendants' Motion to Dismiss the Government's Case at the Close of the Opening Statement.**

The Government's opening statement did not constitute a violation of the laws of the United States. No conspiracy had been set out in the facts set forth in the Government's opening statement. In view of this failure to set out a case in the opening statement the defendants were entitled not to be put through a long, difficult and expensive trial. One of the rights of persons is to be free from needless litigation. Here, the Government's opening statement did not set out facts constituting an offense.

It must be presumed that the court knew nothing about the case. The court attempted to aid the prosecutor in adding to his opening statement sufficient to enable the court to overrule the defendants' motion. [R. 119.] It is respectfully submitted that the defendants were entitled to have their motions granted on the statement of facts of the prosecutor who represented the Government.

*U. S. v. Weissman*, 266 U. S. 377, 69 L. Ed. 334.

IV.

**The District Court Erred in Failing to Direct the Verdict. The Evidence Was Insufficient to Justify the Verdict.**

The verdict should have been directed for the defendants as the evidence is insufficient to support the verdict. The only testimony in the record as to any transaction that allegedly violated the regulations of the Office of Price Administration was the testimony of Leo Isenhower [R. 276] in which he testified that he had a conversation with Benjamin Rose with reference to the purchase of some inner tubes. Isenhower testified that he saw Mr. Rose at one of his laundry stops, a service station on Western Avenue. Isenhower was a laundry driver and picked up laundry. He met Rose at this station. A conversation arose and Isenhower said that he needed some inner tubes for his trucks and did not know where he could get them. [R. 277.] The sum and substance of the conversation was that Rose had some inner tubes for sale and the price was around \$4 apiece. There were five or six inner tubes in a box that Rose brought along on a subsequent occasion. Isenhower said that he did not have any certificates to obtain the tubes and didn't feel that he needed them. [R. 278.] There is no testimony as to what kind of tubes they were, whether *new* (as alleged in the indictment) or used, nor was there any testimony offered as to the character of the tubes nor that Isenhower was doing anything except laying in a stock.

This testimony shows that there is no connection between this isolated transaction and the conspiracy alleged in the indictment. It is not shown that these tubes were a part of any tubes that were a part of any alleged con-

spiracy nor that this was anything more than an individual transaction between Rose and Isenhowe. Such an action does not constitute a conspiracy. The fact that the act of an individual in an individual transaction does not make out a conspiracy.

In the case of *People v. Covington*, 1 Cal. (2d) 316, three defendants were charged with the crime of robbery. It appears that they had broken into the house of a young woman and waited for her and a man to come home. After the defendants had been for some time in the house two young women came home and proceeded to entertain the defendants. One of the young women was hit with a sap or blackjack by one of the defendants and as a result of the blow she died a short time afterwards. Thereafter the other defendants took some jewelry from the house. The court held that the other defendants who took the property subsequent to the murderous attack were guilty of petty theft and that this was a separate and distinct transaction.

See also:

16 Corp. Jur. 135;

*People v. Keefer*, 65 Cal. 232, 3 Pac. 818;

*State v. May*, 142 Mo. 135, 43 S. W. 637;

*People v. Keroff*, 26 Mich. 112;

*People v. Covington*, 1 Cal. (2d) 316;

*People v. Creeks*, 170 Cal. 369, 373;

*People v. Kaufman*, 152 Cal. 331, 334;

*People v. King*, 30 Cal. App. (2d) 185;

*People v. Shurtleff*, 113 Cal. App. 739;

*Langer v. U. S.*, 76 Fed. (2d) 817;

*Becher v. U. S.*, 5 Fed. (2d) 45.



We will hereafter set forth a complete analysis of the evidence showing its entire insufficiency. We have appended at the close of this brief a complete summary of the evidence on this point.

The indictment in this case is drawn under Section 5440 of the Revised Statutes (Title 18 U. S. C., Sec. 88).

It charges a conspiracy in violation of that section, to-wit, to defraud the United States, in that they "did unlawfully, wilfully \* \* \* fraudulently and feloniously engage in a conspiracy to \* \* \* sell, trade, lease, ship and transfer rubber tires, casings tubes to consumers and other persons in violation of the statute, executive orders and directives hereinbefore referred to," which statute, executive orders and directives consist of the act authorizing the creation of the O.P.A., directives of the President creating the same and restricting and regulating the sale of rubber and dealing in new rubber tires, tubes, etc., and regulations of the O.P.A. in that behalf.

Of the ten overt acts charged (designated (a) to (j), inclusive), five of them (c), (e), (g), (h) and (j), charge fraud or deceit; all of these acts are innocent and lawful *per se*; and no one of them tends, in any perceptible manner, to violate any of said directives or regulations.

To secure a lawful conviction it was essential that the prosecution prove one of the overt acts as laid in the indictment; and this is the law regardless of whether other overt acts are proved.

*Fredericks v. U. S.*, 292 Fed. 856;

*Weinstein v. U. S.*, 11 Fed. (2d) 505.

It necessarily follows that if none of the overt acts are relevant, material or competent and if it was error for them to have been admitted and for the court to have refused to strike such testimony from the record, convictions were illegally obtained because there is no competent evidence in the record to warrant the verdict or the judgment.

Appellant proposes to sustain this legal hypothesis and to show that each and all of the overt acts set forth in the instant indictment was lawful and innocent; that, as set forth, none of the overt acts could possibly have had any causal connection with the unlawful conspiracy as averred in the charging clause of the indictment and that, as a matter of law, under these circumstances, said overt acts could not possibly have been committed in furtherance of the alleged conspiracy.

The decisions upon which appellant principally relies to establish this ground for reversal of the conviction are:

*Fain v. United States*, 209 Fed. 525;

*United States v. Biggs*, 211 U. S. 507, 53 L. Ed. 305;

*Tillingham v. Richards*, 225 Fed. 226.

In *Fain v. United States*, 209 Fed. 525, it was said:

“It is neither criminal nor unlawful to do or to conspire to do that which the law does not prohibit but recognizes may be lawfully done without prejudice or injury to the United States,” citing *United States v. Biggs*, 211 U. S. 507, 521.

In that case the defendants were charged with conspiracy to violate Section 5440, revised Statutes, by in-

ducing "persons to make false entries on public lands, to procure and to hold for sale for their own profit relinquishments by homestead entrymen, and to make and cause to be made false and pretended contests of homestead entries for the purpose of preventing the lands covered by them from being entered by other qualified entrymen until they could sell their relinquishments for their own benefit."

As overt acts, it was alleged that:

(a) Kammerer, Strunk, and Rogers made honest and valid homestead entries of their respective tracts of land.

(b) That in September, 1909, the defendants purchased the relinquishments of these homesteaders.

(c) That in October, 1909, Baker instituted a contest against Kammerer on the grounds that he had offered his relinquishment for sale, and had sold it to one Smith, when the fact was that he had not sold it to Smith, but had sold it to defendants, and that he had abandoned his homestead for more than six months.

(d) That Kammerer's relinquishment was not filed until November 3, 1909, when Baker withdrew his contest and Ernest C. Collier, to whom Kammerer's relinquishment had been sold, entered the land as his homestead.

(e) That on September 7, 1909, Fain filed an affidavit of contest against Strunk on the ground that he had offered his relinquishment for sale, and had sold it to one Dennie Y. Hennold, when the fact was that he had not sold it to Hennold.

(f) That two other contests of Strunk's claim were filed on September 7, 1909.

(g) That on October 14, 1909, Fain filed an amended affidavit to the effect that Strunk had abandoned his homestead for more than six months.

(h) That five junior contests for this tract of land were subsequently instituted.

(i) That the relinquishment of Strunk has never been filed, and Fain's contest is still pending.

(j) That on October 25, 1909, the defendants caused K. T. Coffey to file an affidavit of contest of Rogers' entry, on the ground that he had abandoned his tract for more than six months, and Rogers' relinquishment was never filed.

The opinion shows that all of the proceedings were conducted pursuant to an act or acts providing for homesteading of public lands of the United States.

U. S. Comp. St. 1901 and 1907.

The court considers each of the overts separately and shows that none of them were prohibited, and that several were expressly permitted, among which were sales and contracts for sales of relinquishments and contests of claims, and it concludes that the defendants' motion to strike all evidence pertaining to such acts should have been granted because the overt acts "were not acts to effect the object of such conspiracy," and all of the evidence of such purchases, relinquishments, and contests was "inadmissible" to prove the charge in the indictment.



Another point determined, which is especially applicable in this case, was that it was shown that in some instances false affidavits had been filed in support of contests.

In that behalf the opinion states:

“But counsel says the affidavits of contests were false. \* \* \* The false statements were not material to prove perjury because they related to an immaterial issue, and because that offense was not charged in the indictment and its commission was not in issue. It is not a criminal offense for a litigant to delay the administration of the law by asserting, even under oath, in his pleading of proof the existence of a fact which did not exist. If it were, one or the other of the parties in many a contested lawsuit would either be deterred from asserting the existence of facts the proof of which would be essential to his rights, but doubtful, or would be liable to punishment for asserting their existence if he failed to prove them. No sound reason is discovered for the introduction in evidence or the consideration by the jury of the affidavits and contests of the entries of Kammerer, Strunk, or Rogers, or of their relinquishments or of the entries themselves. They should have been excluded from the consideration of the jury in the trial below.”

Thus the situation in the instant case is exemplified by that in *Fain v. United States*.

There is no difference in principle between the two cases.

The essence of the *Fain* decision is that where none of the overt acts charged are unlawful and none of them as pleaded “tend \* \* \* in any way to defraud” the United States “out of anything of value” evidence to

establish such overt acts is inadmissible because it is immaterial and irrelevant.

In the instant case there can be no doubt that overt act “(a)” in the indictment is wholly innocent. Phil Taplin, Sam Weinstein and Louis Vitagliano all held retail licenses. None of the directives or regulations described in the indictment applies to persons holding such licenses or restricts them in transporting rubber tires and tubes from one point to another.

It was the privilege of these men to transfer their tires and tubes to a chicken coop and store them therein or to pile them up on a vacant lot if they were willing to run the risk of theft or hi-jacking.

“(b)” overt act is equally lawful because Rose was a duly licensed dealer and so was Kreling from whom he purchased the tires. [R. 322; 160.]

“(c)” overt act is plainly immaterial and irrelevant. It cannot be doubted that Rose had a right to rent any premises in which to store his tires and tubes. His making a false representation to the owner of the premises in order to get the rental of the premises is even more plainly immaterial than were the false affidavits made by Baker and Fain in the *Fain* case. The false affidavits in that case resulted in a delay in the court contests therein involved. In this case the false representation attributed to Rose had no effect whatever upon any proceeding, nor could it, by any stretch of conjecture or suspicion, concern the O.P.A. or the administration of the lawful functions of that office. No regulation required Rose to keep the O.P.A. informed of the whereabouts of his tires and tubes. If he had any motive whatever in renting the premises in question other than for purposes of storage

it is fair to assume that he shared the prevalent resentment against the pernicious interference in his private business affairs of Government officers, who, it is commonly known, often, if not habitually, flaunt constitutional rights.

At any rate, neither in the indictment nor in the evidence is there the slightest factual showing that this false representation was in furtherance of the alleged conspiracy.

In “(d)” overt act, the situation is the same as in “(a)” and “(b)”. Each of the parties, Kelher and Rose, were regularly licensed retail dealers and owned and conducted one or more shops where tires were sold. It was entirely lawful for Kelher to sell his rubber articles to Rose, and for Rose to buy them and transport them from Kelher’s premises.

Overt act “(e)” was lawful in every respect. Slavett was a dealer in tires and had been at the same address for 12 years. [R. 208.] The only conceivable purpose for setting this act up is to reveal that Rose directed “the transfer man” to list the tires and tubes as “auto accessories” in “his statement of services rendered.”

This item on the “statement of services rendered” could not deceive anyone. The invoices were properly made out, showing that the tires and tubes were sold to Rose. [R. 148.] The O.P.A. knew all about the transaction and it complied in every respect with directions given by that office to Slaver. [R. 147.] Under the *Fain* decision evidence of this overt act was clearly inadmissible and immaterial.

Overt act “(f)” was legal. Mac R. Brown was a retail dealer in tires and tubes and was doing business un-



der his license. [R. 156.] The same was true of Sam Parsner, and there could be no claim that it was a violation of the law for Vitagliano to help Brown move the tires which the latter had lawfully purchased.

Overt act “(g)” is trifling. No regulation makes it unlawful to lie to an investigator of the O.P.A. The warped concept which this office and the prosecutor had of a federal bureau and its assumed sanctity is the chief cause of the present chaos and confusion in the administration of that office. The presence of this overt act in the indictment can be accounted for on no other hypothesis. In the first place the investigator had no legal right to demand information from Rose as to whether he, Rose, had sold any tires or tubes which he owned. Of course, Rose was aware that this investigator was and had been snooping into Rose’s affairs. Rose was under no obligation to tell the investigator anything. If he chose to say that he had sold the Kreling tires to Golden Lubricants, Inc., it was immaterial in this case, whether the statement was true or false. As a matter of fact the records show that the sale was made.

However the overt act, if proved, was clearly immaterial and irrelevant under the reasoning and decision of *Fain v. United States, supra*.

Overt act “(h)” is identical with “(e)” plus “(a)”.

Overt act “(i)” is another example of a trifling averment, and one which evinces a belief in the past of the pleader that with the creation of the O.P.A. by presidential directive. Constitutional rights and guaranties were thrown in the discard, at least for the duration of the life of the O.P.A. Surely the averment of this overt act presupposes that constitutional property rights do not



exist. Upon no other theory can it be suspected that *any* unlawful purpose or design is indicated by the conduct of an owner who moves his property from a place where it was stored to a "place or places unknown." Since when has it become a ground of suspicion that an owner has moved his property without informing everyone where he placed it? The Government surely must believe that such a circumstance is more than suspicious—that it is either illegal or at least so bordering on illegality as to provide an inference of an unlawful design.

Otherwise under the sound doctrine of *Fain v. United States* (which has not been judicially overturned), overt act "(i)" is utterly meaningless and irrelevant and evidence concerning it was erroneously admitted.

Overt act "(j)" was just as innocent as the others. There is nothing in the regulations or the presidential directives which the defendants were charged with conspiracy to violate which forbids one retail tire dealer offering to sell tires to another such dealer. Doyle testified: "I had a retail tax permit. The firm had it for about six years." [R. 186.] Hence, although he said, "I did not ever sell tires," he had a right to start selling whenever he chose.

It has been shown that under the doctrine and reasoning of *Fain v. United States*, *supra*, none of the overt acts set forth in the instant indictment are relevant or material to the conspiracy which is charged in the indictment. The *Fain* decision cites *United States v. Biggs* in support of the proposition that it is neither criminal nor unlawful to do that which the law does not prohibit but which it recognizes may be done without prejudice or injury to the United States. The *Biggs* opinion so holds

and decides that all of the overt acts charged in the indictment construed by it were valid. In that case the purpose of the conspiracy, as charged, was to defraud, (Sec. 5440, U. S. Comp. St. 1901, p. 3676), by hiring, and under agreements with entrymen, having them "pay for lands with moneys of the corporation" and having them make entries.

The court concludes:

"From the foregoing I conclude: First, that the agreements between the entrymen and defendants, as charged in the indictment, were neither void or voidable, but were enforceable contracts between the parties; second, that the acts charged are neither prohibited by statute and unlawful, nor *mala in se*, nor do they involve moral turpitude; hence, whether we consider them either as means to accomplish an end or as the end to be accomplished, they do not constitute a crime. The indictment, therefore, does not charge an offense."

Thus it appears that the *Fain* and *Briggs* decisions are in accord.

The significance and reasons for these decisions is clarified and emphasized by another Federal opinion which supplements those just named, approaching and deciding the same question in a slightly different form. This decision was rendered in *Tillingham v. Richards*, 225 Fed. 226.

The indictment in the *Tillingham* case charged conspiracy to defraud the United States of sums of money to become due for internal revenue taxes.

It is pointed out in the opinion, by Judge Brown, that the indictment charges conspiracy to do an unlawful act. He says:

“\* \* \* not for doing a lawful act by unlawful means, and therefore does not contain, and does not require, allegations to the effect that the defrauding of the United States was to be accomplished by deceit, misrepresentation, or concealment. If the indictment were based upon actual fraud by deception or concealment, it would, of course, be essential to allege this as a part of the conspiracy or plan, or of the means whereby the fraud was to be accomplished. *Pettibone v. United States*, 148 U. S. 197, 13 Sup. Ct. 542, 37 L. Ed. 419.”

With reference to the overt acts the opinion states:

“Confusion seems to have arisen from the fact that the overt acts are not alleged consistently with the object of the conspiracy as defined by the indictment. The overt acts seem to be alleged upon the theory of defrauding the United States by a scheme which comprehended deception, or illicit manufacture, or concealment. The result is that we have allegations of some 49 overt acts, most of which are framed on the theory of a conspiracy to defraud by deception or concealment, though no such conspiracy is charged in the indictment.”

The instant indictment charges conspiracy to do an unlawful act or acts and “most of the overt acts are framed on the theory of a conspiracy to defraud by “deception and concealment, though no such conspiracy is charged.”

Judge Brown continues:

“As was held by the Supreme Court in a recent case, *Joplin Mercantile Co. v. United States*, 236 U. S. 531, 35 Sup. Ct. 291, 59 L. Ed. 705, February 23, 1915, the plan of the conspiracy must be found in the clause of the indictment which sets it forth. It cannot be enlarged by the overt acts alleged. Even if it could be so enlarged, the allegations of overt acts are entirely too uncertain to enable us to read this indictment as for a conspiracy any part of which was deceit or concealment, or which involved, directly or indirectly, the unlawful procurement of materials, or unlawful or covert manufacture.”

Applying this rule, the overt acts in the instant indictment cannot be used to enlarge the “conspiracy found in the clause of the indictment which sets it forth,” and even if it could be enlarged the allegations of the overt acts being in precisely the same form as those in the *Tillingham* indictment do not “enable us (this court) to read this indictment as a conspiracy any part of which was deceit or concealment, or which involved, directly or indirectly, the unlawful purchasing, transportation or storage of rubber tires or tubes.

Next Judge Brown clarifies his meaning in stating, “the allegations of the overt acts are entirely too uncertain,” etc.

The opinion reads:

“While it is possible that what are alleged as overt acts might be such as to a conspiracy of a different character, they are not in train or in causal connection with the unlawful object of the conspiracy here alleged.



“As the object of the conspiracy, as expressly alleged, was to defraud the United States at Providence by means of removing from the factory at Providence oleomargarine upon which the tax had not been paid, anything which merely effects the object of manufacturing the taxable commodity cannot be regarded as an act to effect the object of this conspiracy.”

Concerning the same matter of the uncertainty of the allegations of the overt acts, Judge Brown also states:

“The object defined as the purpose of a criminal plot, and not some other undefined object, must be looked to in determining whether an alleged overt act is in fact an act to effect it. The purchase of palm oil, its shipment, payment for it, etc., may be acts to effect the object of manufacturing colored oleomargarine; but they cannot possibly effect the removal of that oleomargarine without the payment of the tax, unless by some connection which does not appear and which is not inferable from what is alleged. These are, for all that appears, nonculpable acts, from which no intent to defraud can be inferred, and which cannot support a finding of probable cause.”

It is equally true in the instant case that although the isolated acts which are alleged as the overt act in the indictment are “not in train or in causal connection with the unlawful object of the conspiracy here alleged” and that since it does not appear in the indictment (or even in the evidence) from what is alleged or proved that “some connection” exists, “such acts are for all that appears” these “nonculpable acts, from which no intent to defraud can be inferred,” these acts in the instant case are the perfectly lawful purchase of tires and tubes by

certain of the defendants, the transportation and storage of the same, all of which acts were equally lawful, failure to inform the O.P.A. of the whereabouts of the articles (even if deception had been used), which is not a violation of any directive or regulation and is therefore innocent; of precisely the same innocent type of the acts of which Judge Brown said they could not possibly effect the object of the conspiracy” or “being in furtherance of the unlawful object of the conspiracy,” to-wit, to violate in some unspecified way, one or more of the directives and regulations named in the indictment.

The opinion in the *Tillingham* case adds the following clinching and conclusive statement whose pertinency to the instant case is obvious and unavoidable:

“The purchase of materials which, like palm oil, may be lawfully used in the manufacture of a lawful taxable product, are merely steps in the creation of a taxable product, and are preliminary to the creation of an obligation to pay money. This is the creation of the condition upon which it may become possible to defraud the United States; but this is sharply separable from the defrauding which is contemplated after the obligation shall arise.

“A tradesman may be defrauded in the creation of a debt to him, since he simultaneously parts with the consideration, and every step whereby the debt is created is in furtherance of the fraud. The United States cannot be defrauded by the production of a taxable commodity, since it parts with no consideration. There is no similarity in the cases.

“Unlawful manufacture, or moonshining, may be a step toward the accomplishing of fraud; but lawful manufacture, even if secret, as many manufacturers

are, is not a step towards the deprivation of the United States of sums of money.

“Even if we assume a plan which involves from the outset a scheme of voluntarily creating a debt to the United States for which it surrenders nothing by way of consideration, and a deprivation of the United States of that debt when it shall be created, no innocent step toward the creation of a new right in the United States to receive sums of money should be regarded as an act ‘to effect the object’ of depriving the United States of that money.”

So in this case the lawful purchase by certain of the defendants of rubber tires and tubes and the transportation and storage of them, EVEN IF SECRET, “is not a step” toward depriving or obstructing the United States in the exercise of its regulatory power over THE DISPOSITION OF THE TIRES AND TUBES.

The purchases, transportations and storage, “EVEN IF SECRET” having been lawful and innocent were each and all acts and steps toward the creation of a ‘new right’ in the United States, to-wit, the right *to regulate the disposition of these articles*, and such overt acts cannot be regarded as acts “‘to effect the object’ of depriving” the United States of the regulatory right.

To reason otherwise defies logic which fact the *Tillingham v. Richards* opinion demonstrates.

However, logic and the weight of the decisions which have been discussed does not comprehend all of the authority which compels the conclusions which said decisions reached and announced.

A contrary theory or holding would be at war with other settled principles of criminal, such as:

1. The general rule that circumstantial evidence, to support a conviction, must be such that the conclusion drawn therefrom, excludes every reasonable hypothesis other than that of guilt applies to the offence of criminal conspiracy.

*Beeckam v. U. S.*, 96 F. (2d) 15;

*Copeland v. U. S.*, 90 F. (2d) 78;

*Kassin v. U. S.*, 87 F. (2d) 183;

*Gerson v. U. S.*, 25 F. (2d) 49;

*De Luca v. U. S.*, 298 Fed. 412.

2. No conviction can be had or will be sustained on appeal when the evidence is as consistent with innocence as with guilt, and the Appellate Court will review the evidence to determine that question.

*Dahly v. U. S.*, 50 F. (2d) 37 (8th Cir.);

*Preightel v. U. S.*, 49 F. (2d) 235 (8th Cir.);

*Wright v. U. S.*, 227 Fed. 885 (8th Cir.);

*Vernon v. U. S.*, 146 Fed. 121 (8th Cir.);

*Sykes v. U. S.*, 204 Fed. 909 (8th Cir.);

*Ayala v U S*, 268 Fed 296 (1st Cir);

*Gerson v U. S.*, 25 Fed. (2d) 49 (2d Cir.);

*McGuinniss v. U. S.*, 256 Fed. 621 (2nd Cir.);

*Ridenour v. U. S.*, 14 F. (2d) 8288 (3rd Cir.);

*Yusem v. U. S.*, 8 F. (2d) 6 (3rd Cir.);

*Garst v. U. S.*, 180 Fed. 339 (4th Cir.);

*La Rosa v. U. S.*, 15 F. (2d) 479 (4th Cir.);

*Sherman v. U. S.*, 268 Fed. 517 (5th Cir.);



*Jelke v. U. S.*, 255 Fed. 264 (7th Cir.);  
*Ferris v. U. S.*, 40 F. (2d) 837 (9th Cir.);  
*Sugarman v. U. S.*, 35 F. (2d) 663;  
*Stubbs v. U. S.*, 249 Fed. 571 (9th Cir.);  
*Peterson v. U. S.*, 274 Fed. 929 (9th Cir.).

3. Proof of association between the alleged conspirator is not substantial evidence of the fact of conspiracy,

*People v. Yant*, 26 Cal. App. (2d) 725;  
*People v. Weber*, 7 Cal. App. (2d) 620 (12 C. J. p. 639, note 52; 15 C. J. S. p. 1151, note 81, citing cases).

4. Where the evidence is as consistent with innocence as with guilt and the evidence of an essential element is circumstantial, the accused is entitled to a directed verdict.

*De Luca v. U. S.*, 298 Fed. 412.

In the case last named, De Luca and one Pandolfo were charged with conspiracy to violate the Prohibition law. Sixteen overt acts were set forth. They included acts far more potentially indicative of guilt than any to be found in the instant indictment, such as, the accused occupied the same house, that is, Pandolfo occupied as his home a portion of the house above the basement where a great quantity of whiskey and other incriminating articles were found. Pandolfo had a desk in De Luca's office; the two men were associated closely in certain incidents at about the time of De Luca's arrest, and Pandolfo agreed with arresting officers to, and he did, bring De Luca to the Commissioner's office.

However the court considered all of the evidence bearing on the issue and concluded:

“The affirmative charge requested was, if the jury believed the evidence, they must find the defendant Pandolfo not guilty. The rule of law, where the government relies upon circumstantial evidence alone for conviction of a defendant, is that the circumstances proven must not only point to the defendant’s guilt, but must be inconsistent with his innocence. As otherwise stated, the circumstances proven must be such as to admit of no other reasonable hypothesis or explanation than the guilt of the accused. Can it be said that the circumstances proven in this case are inconsistent with the innocence of Pandolfo? We think not. Every circumstance proven in this case is perfectly consistent with innocence, and the request for the affirmative charge should have been granted.”

Perhaps the most outstanding of the cases in which the reviewing court has examined the evidence, circumstance by circumstance, analysing each one, and determined for itself, giving the accused the benefit of any doubt, that the evidence was as consistent with innocence as with guilt, and thereupon reversed the conviction in *Dahly v. U. S.*, 50 F. (2d) 37. However, the same procedure has been followed in nearly all of the cases listed under proposition “2,” *supra*, including those in the 9th Circuit, of which the *Ferris v. U. S.* (40 F. (2d) 837) opinion squarely recognized it to be the duty of an Appellate Court to do so.

Since, as declared in *Haywood v. United States*, 278 Fed. 795, “criminality cannot be proved by proving innocence,” it seems unthinkable that any court could not hold that where, as in this case, each and every overt act was admit-

tedly lawful and innocent, it could be a matter of doubt that the circumstances proved are at least as consistent with innocence as with guilt.

This conclusion is surely rendered inescapable since, looking to the entire record, only one unlawful transaction is to be found, and it was participated in by only one of the alleged conspirators.

Appellant asserts, and feels assured that this statement will not be questioned that no other transaction except that in which the witness Leo Isenhower testified that he, a mere laundryman, "sometime in 1942," bought new tires from Mr. Rose, no act or transaction of an unlawful character was proved by the prosecution.

This Isenhower sale was not among the ten overt acts alleged in the indictment and neither the conspiracy nor the participation therein of other alleged conspirators could be established by this act in which they were not shown to have had any part or to have had any knowledge.

Isenhower testified:

"\* \* \* as to the other defendants in this case  
\* \* \* I have never seen any of them before" [R.  
pp. 283, 284.]

Nowhere in his testimony did Isenhower mention any of the other defendants. [R. pp. 276-284.]

The overt acts set forth in the indictment were proved, without substantial additions, as laid. The court will take judicial notice of the regulations under which as duly licensed retail dealers in rubber tires and tubes the defendants had a right to purchase and transport such articles from other like dealers, both buyers and sellers having *bona fide* places of business. (Citing cases.)

The following is the substance of the prosecution's proof in respect to the overt acts as laid in the indictment:

*Overt Act “(a)”*, is the same transaction as overt act “(h)”. Both rest principally on the testimony of Mr. and Mrs. Humbert. Mr. Humbert swore that Mr. Rose was the only defendant who hired these trucks from me. “\* \* \* I had no business transactions with the other defendants in this case. Not a bit, no.” [R. p. 203.]

Mrs. Humbert testified that before this trip Rose said to two other men, “we should not make the same mistake in loading both vans at the same time.” [R. p. 206.] Mrs. Humbert, at first said that Brown and Vitagliano were the other two men [R. p. 206] but on cross-examination stated that she might be mistaken “on that one,” referring to Vitagliano. [R. p. 207.]

Overt act “(b)”, was testified to by Mike Kreling. He said that in July, 1942, he had a service station at 1516 South Main; that he sold tires and accessories and had on hand certain 48 new tires and 128 or 130 tubes which he sold to Rose [R. p. 159]; that Rose signed the invoice and the OPA checked his books. [R. p. 160.]

Overt Act “(c)”, was related by the witness Douglas F. Scott. He said that he was trust officer for the Bank of America in August, 1942; that Rose rented the 613 North Virgil premises from the bank; that Rose said he wanted to store some furniture and equipment, and that it was not heavy equipment. [R. p. 168.]

Overt Act “(d)”. Sam Kelber testified that for eight years he was in business in Ontario, California, selling



primarily tires [R. p. 175]; that he sold the new tires and tubes to Rose who paid him \$100 cash deposit; that Rose had a retail sales license to deal in new tires and tubes [R. p. 180]; that he contacted the OPA and was told the sale was legal; that Weinstein arranged for him to meet Rose [R. p. 182]; that when Rose moved the tires from Kelher's premises and Weinstein was present, Vitagliano was there but did not help in any way. [R. p. 182.]

Overt Act "(c)". Ruben Slavett testified that he was in business in Pasadena at 1850 East Colorado street and in August, 1942 Weinstein said he might get a buyer for him, Slavett [R. p. 208]; that Weinstein brought Rose and Slavett together and Slavett and Rose negotiated [R. p. 209]; the deal was finished and Rose paid a deposit of \$200; Slavett was not on hand when Rose came by appointment to take the merchandise [R. p. 210]; and Rose called the deal off. Later they again negotiated and Rose bought the merchandise [R. p. 213]; Rose signed the invoices [R. p. 214]; Slavett followed the directions given by the OPA and when Rose took delivery of the new tires and tubes, Vitagliano and Weinstein were present; there were 212 new tires and 798 new tubes which were sold to Rose. [R. p. 216.]

C. A. Humbert testified that he was in the moving and storage business under the name of Bay Cities Express and Transfer; that he arranged with Rose to move some automobile accessories from Ontario, California, and he went there with two vans [R. p. 192]; that Humbert gave Rose the paid bills for services and Rose told him

to put down "auto accessories", which Humbert did. [R. p. 196.]

Overt Act "(f)". Sam Parsner testified that he sold Mac R. Brown some tires in September, 1942; that Vitagliano was with him; Parsner sold Brown 38 tires, all he had. Parsner was then in the tire business at 524 West Pico. Parsner had no business with Rose or anyone but Brown; Vitagliano helped load the truck; Parsner found that Brown had a station and the tires were delivered in broad daylight. [R. p. 226.]

Overt Act "(g)". Jack Foster, an investigator of the OPA, testified that in the latter part of July, 1942, he questioned Rose as to what he had done with the tires he purchased from Kreling; he told me he had them but that he would not let me see them until the first of the month; Foster said he could not wait that long; Rose said "I guess you better see my attorney"; Foster asked, "Does he have the invoices or anything showing what happened to the tires," and Rose said, "He should have by the time you talk with him," and gave attorney Benjamin Goodman's name and address. [R. p. 197.]

Overt Act "(h)". The witness Humbert testified that on September 29th, 1942, he moved tires for Rose from the corner of Wabash and Thornton, using two trucks [R. p. 197], to a place on Sunset boulevard [R. p. 198]; and one truck went to the Washington Van & Storage Company. [R. p. 199].

Humbert said that he put on his bill "auto accessories" because Rose asked him to put it that way on the first trip. [R. p. 200.]

Humbert said that on the trip to Ontario, Rose told him to cover the vans all good for fear of hijacking, and that the transaction was legal; the second trip to Pasadena was in broad daylight and on the third to Brooks Randall Company it was getting dark when they were unloading. [R. p. 203.] Humbert had no business transactions with the other defendants, and he told the OPA officer Foster about transporting the tires from Ontario to Virgil. [R. p. 204.]

Overt Act "(i)".

Overt Act "(j)". Government witness Henry Doyle testified that in September, 1942, he was manager of "The Smiling Irishman"; he said "We sell used automobiles;" he testified that Rose came in and asked if he, Doyle, wanted to buy new tires; Doyle said "No"; Rose left his card [R. p. 185]; Doyle did not sell tires but he had a retail sales permit. [R. p. 186.]

In view of the admissions which were made by OPA agents as witnesses, it hardly seems probable that the Government will dispute appellants' claim that the overt acts were all lawful and innocent.

William Fitzer, an investigator for the OPA testified at length concerning the purchase of tires from Mr. Novis-off by Taplin and the transportation of them from place to place until they were unloaded at the address on City Terrace. [R. pp. 140-145.]

On cross-examination he said,

“It was legitimate at that time, for a retailer to purchase new tires and tubes and transport them to his place of business under certain circumstances.”

He said he had found that Taplin was the purchaser and the holder of a retail sales license. [R. p. 146.]

He said that up to June 1, 1942 he did not find any violation of the rules or regulations of the OPA. [R. p. 148.] This included the last unloading. [R. p. 147.]

Jack Foster, another investigator for the OPA who had worked with Fitzer testified substantially to the same effect. [R. p. 136.]

He testified that Mac R. Brown purchased the tires and tubes from Taplin and that Brown was an “authorized retail dealer” and had a legitimate place of business. [R. p. 156.]

John Dundas, a lawyer, and chief investigator of the OPA, concurred in the testimony of the others, except that he mentioned a discrepancy of “these few tires,” for whose disappearance Taplin had been unable to account. [R. p. 165.]

Since these transactions were lawful it follows that each of the other purchases and transportation charged as overt acts were also lawful because each of the defendants was a holder of retail dealers’ sales license and operated one or more *bona fide* places of business, and in each instance the purchase or sale was with someone similarly situated.



## The Court Should Have Granted the Motions to Strike Irrelevant and Incompetent Evidence.

The District Court should have sustained the motions to strike the evidence made by Attorney Goodman. These motions were contained on pages 350 to 356.

The motions to strike on the ground that no *corpus delicti* had been proved and no contract or agreement or conspiracy established or tied in with the defendants should have been granted instead of denied. [R. 351.]

Also, the motion to strike the testimony of Mr. Foster made on behalf of both defendants should have been granted.

The motions to strike the testimony of the different witnesses on the grounds that they had been in no way connected up with defendants Rose and Vitagliano should have been granted, as this testimony had not been connected up in any way.

The testimony of the witnesses John Dundas and Mr. Foster, investigators for the Office of Price Administration, was hearsay, irrelevant and incompetent, and the motions to strike should have been granted.

*Commonwealth v. Debussey*, 49 Pa. Super. 371;

*Commonwealth v. Shobert*, 49 Pa. Super. 371;

*Commonwealth v. Steecney*, 49 Pa. Super. 370;

*Commonwealth v. Lynch*, 49 Pa. Super. 370;

*Commonwealth v. Duffy*, 49 Pa. Super. 344.

See also:

*Fain v. U. S.*, 209 Fed. 525;

*Tellingham v. Richards*, 225, Fed. 226.

VII.

**Title III of the Second War Powers Act as Amended  
March 27th, 1942, Is Too Vague, Indefinite and  
Uncertain to Form a Standard of Guilt. It There-  
fore Violates the Fifth Amendment to the Consti-  
tution of the United States.**

The only provision in the Act which contains a penal provision is subdivision (5) as follows:

"Any person who willfully performs any act prohibited, or willfully fails to perform any act required by, any provision of this subsection (a) or any rule, regulation, or order thereunder, whether heretofore or hereafter issued, shall be guilty of a misdemeanor, and shall, upon conviction, be fined not more than \$10,000 or imprisoned for not more than one year, or both."

The subsections of the Act to which this penal provision refers are as follows: (a) (1) relates to the negotiation of contracts for the acquisition of parts, etc., for navy vessels or aircraft and delivery of materials and refers to the negotiation of contracts for the acquisition of these materials for such navy and army contracts. Subdivision (2) relates to delivery of materials to which priorities may be assigned for such materials.

Subdivision (3) relates to obtaining information, keeping reports and records and making inspection of books by the President.

Subdivision (4) authorizes the President to administer oaths and affirmations, and require by subpoena the attendance of witnesses.

Subdivision (5) is the provision we have quoted.

Subdivision (6) relates to the jurisdiction of the District Court and courts of the United States and Territories.

Subdivision (7) relates to exemption from damages or penalties from defaults on contracts.

Subdivision (8) relates to the power of the President to exercise the power of the President or authority conferred on him through other departments or agencies.

Nowhere in this section is there an ascertainable standard of conduct.

Due process of law guaranteed by the Fifth Amendment of the Constitution of the United States provides that a statute must prescribe the rules of conduct so clearly that men of common understanding may know what is intended.

*Pierce v. United States*, 314 U. S. 306, 86 L. Ed. 226;

*Lanzetta v. New Jersey*, 306 U. S. 451, 83 L. Ed. 888;

*United States v. Elcone*, 255 U. S. 89, 65 L. Ed. 520;

*Connally v. General Construction Co.*, 269 U. S. 385, 391, 70 L. Ed. 322, 328;

*United States v. Reese*, 92 U. S. 214, 223, 23 L. Ed. 563, 565;

*Czarra v. Medical Supers.*, 25 D. C. 443, 458;

*Stromberg v. California*, 283 U. S. 350, 368, 75 L. Ed. 1117, 1122, 51 S. Ct. 532, 73 A. L. R. 1484;

*Lovell v. Griffin*, 303 U. S. 444, 82 L. Ed. 949, 58 S. Ct. 666;

*Connally v. General Constr. Co.*, 269 U. S. 385, 391, 70 L. Ed. 322, 328, 46 S. Ct. 126;

*United States v. Ballard*, 12 Fed. Supp. 321.

VIII.

**The District Court Erred in Denying Defendants'  
Motion for Arrest of Judgment.**

A.

The District Court erred in failing to grant the motion in arrest of judgment. (A) The indictment itself was so defective for each of the grounds set forth in the demurrer that the court should have granted the motion in arrest of judgment.

B.

The Court erred in failing to arrest the judgment where it was shown that there was an illegal seizure of evidence in this case. Officer Fred H. Doane, a city police officer [R. 242], was called by an investigator of the United States and the O.P.A. and another gentleman. [R. 243.] Foster told Doane where the warehouse was and the tires were stored. The place was located. Doane did not have a search warrant. Foster did not tell Doane that if a Federal officer broke in they would not be able to get the evidence and that they would have to have a state officer go in. Doane looked into the window and saw tires there. Doane and D. J. Hamilton, another police officer, then placed Rose under arrest, took the keys to this building out of Rose's possession and went into the warehouse and took out a number of tires.

Thereupon the tires were rolled into the courtroom and placed before the jury box. [R. 248.] At this point in the case Mr. Goodman objected to the tires being rolled into the courtroom on the grounds that they were incom-



petent, irrelevant and immaterial and were illegally obtained and were being rolled before the jury's eyes for the purpose of creating prejudice. Over the objections of the defendants the tires were admitted in evidence and the list of tires was marked as Exhibit No. 26. The Court should have sustained the objection to the evidence thus illegally obtained by state officers operating in collaboration with the Federal officers.

*McNabb v. U. S.*, 318 U. S. 332, 63 S. Ct. 608, 87 L. Ed. 819;

*Gould v. U. S.*, 255 U. S. 298, 65 L. Ed. 647;

*Amos v. United States*, 255 U. S. 313, 41 S. Ct. Rep. 266, 65 L. Ed. 654;

*Byars v. U. S.*, 273 U. S. 28, 71 L. Ed. 520;

*Go-Bart Importing Co. v. United States*, 282 U. S. 344, 51 S. Ct. 153, 75 L. Ed. 374;

*Silverthorne Lumber Co. v. United States*, 251 U. S. 385, 64 L. Ed. 319;

*Anderson v. United States*, 87 L. Ed. 829.

None of the testimony regarding the tires was admissible in evidence. It was not shown to have been material in any way to the charges in the indictment, none of the tires were connected up in any way with any transaction in violation of any statute or any rule or regulation. Defendant Rose had a right to have the tires, he was a dealer, and it was not charged that he was illegally in possession of them.

C.

The District Court should have granted the motion in arrest of judgment for prejudicial error apparent on the face of the record and because the record failed to show facts essential to the verdict.

*Blitz v. U. S.*, 153 U. S. 308, 38 L. ed. 725;

*U. S. v. Goodwin*, 20 Fed. 237;

*Clement v. U. S.*, 149 Fed. 305;

*Morris v. U. S.*, 168 Fed. 682;

*Kellerman v. U. S.*, 295 Fed. 796;

*U. S. v. Gibson*, 31 F. (2d) 19;

*Banta v. U. S.*, 12 Fed. 765.

D.

The motion in arrest of judgment should have been granted as it appears that the indictment fails to charge a public offense.

*Blitz v. U. S.*, 153 U. S. 308;

*U. S. v. Simmons*, 96 U. S. 361, 24 L. ed. 819;

*Kellerman v. U. S.*, 295 Fed. 796;

*McKenna v. U. S.*, 127 Fed. 88;

*U. S. v. Ford*, 34 Fed. 26;

*U. S. v. McGuire*, 64 F. (2d) 485.

E.

The indictment pleaded essential elements of the charge attempted to be made in the generic language of the statute, for which a motion in arrest of judgment will be granted.

*Blitz v. U. S.*, 153 U. S. 308;

*McKenna v. U. S.*, 127 U. S. 88;

*U. S. v. Ford*, 34 Fed. 26.

It has been shown that the instant indictment fails to charge any offense; and more specifically, that it fails to charge any offense under the statute, directives and regulations under which it purports to be drawn.

It has been pointed out that said indictment is wholly insufficient and a nullity because it fails to inform the accused of the nature of the charge; "it fails to identify the offense attempted to be made; and it describes the offense in the generic language of a generically worded statute or governmental mandate, only;"

Decisions have been produced which hold that such an indictment violates the fifth and sixth amendments to the Federal Constitution and is thereupon void.

It has been shown that the deficiencies in the instant indictment are substantial and jurisdictional.

Further authority is afforded for the proposition that the insufficiency of the instant indictment is jurisdictional by decisions holding that discharge on *habeas corpus* will be ordered to one held under such an indictment.

Wherefore appellants pray for reversal of the judgments.

Respectfully submitted,

MORRIS LAVINE,

619 Bartlett Building, Los Angeles 14,

BENJAMIN J. GOODMAN,

1010 Wm. Fox Building, Los Angeles 14,

*Attorneys for Appellants.*







## SUPPLEMENT.

The following is a summary of the testimony in support of the motion for a directed verdict on account of insufficiency of the evidence:

HENRY NOVISOFF

testified as follows: My name is Henry Novisoff.

Mr. Norcop: Before I interrogate Mr. Novisoff, under the authority of the Federal Register Act, 1940 Statutes, 500, I now ask to have marked for identification 11 booklets that are the publications in the Federal Register, of the matters mentioned in the first 12 counts of the indictment.

The first 12 paragraphs.

Mr. Goodman: That is agreeable. [R. 126.]

My business in May, 1942, was automobile tires; re-treading, new tires, at 1161 South Main, under the name of Perfect-Made Tire Company. I know the defendant Phil Taplin, have about six years, in May of last year, I telephoned him.

The Court: Let us have an understanding now, gentlemen, and it will save a lot of strain on your voice, and a lot of overruling of objections. May it be stipulated that the evidence introduced will be subject to a motion to strike unless it is connected, and that will apply to each defendant, and will be received under that understanding?

All counsel accept the stipulation. [R. 127.]

I called him up and asked him if he was in the market for two retreading molds, and he said, "At the present time I am not, but I am in the market for new tires and new tubes." The next day, or two days later, I don't remember the day exactly, he came and showed me the

rationing regulation where a retail dealer can sell to another retail dealer without a certificate. I called D'Orr's secretary, whose name is Mr. Johnson, and asked him if they could be sold to another dealer, tires and tubes, and he said, "If he has a resale number and he is a legitimate tire dealer you absolutely can sell them, but to play safe," he said that he should have a letter notarized that he is 50 per cent wholesale and 50 per cent retail, and by presenting to you a certificate of resale number and notarizing this paper you are absolutely playing safe to sell him those tires.

Then I saw Mr. Taplin at my place of business following that. I talked to him and explained that I had talked to Mr. Johnson, secretary to Mr. D'Orr. Mr. Sam Weinstein came with him. He was present when the talk occurred between Mr. Taplin and me. [R. 128.] We went upstairs and typed a letter to the best of our knowledge, and went across the street and notarized it; Phil Taplin signed it, and then gave me a deposit on that date, and Sunday they picked up the tires. He made a deposit of \$150 in cash. The total price agreed upon for my new tires and tubes was \$4,800.00. I was paid the balance with a certified check. The check was signed by Phil Taplin. As to when delivery should take place, he said "Saturday, that is my busy day; if you don't mind, I will take delivery Sunday." That was convenient to us, because we are not open on Sunday, so he sent Mr. Weinstein for the tires. It was in the morning between 9:00 and 10:00 o'clock. I was there. The vehicles brought to load the tires in were closed trucks. As to who was driving those vehicles, I think Mr. Weinstein, and another fellow with him, but I don't recollect his name. [R. 129.]

The witness identified the document signed by Taplin.

(The document referred to was received in evidence and marked Government's Exhibit No. 2.)

Mr. Norcop reads it: "I, Phil Taplin, located at 3412 Winter Street, Los Angeles, for the last five years, handling new, used and retread tires, have an average of 50% retail sales. My retail tax permit number is AA-6264.

Signed: Phil Taplin.

Witness: G. Metzger.

Subscribed and sworn to before me this 22nd day of May, 1942. Ada L. Sack, Notary Public in and for County of Los Angeles."

I gave Mr. Taplin or Mr. Weinstein an invoice for this merchandise. The witness identifies a "junk sheet" as the invoice. [R. 130.]

These other six or seven sheets are new tires and new tubes. This is an itemization of the summation that appears on the pink sheets. The next day or so he came to me, and he bought some more tires on the 25th; 14 tires. I said, "How the dickens can you sell tires? We have only sold a few tires. I don't understand how you can dispose of them." He pointed out to me that Weinstein was connected with a lot of physicians and surgeons who were entitled to new tires. Doctors, and that through him he sold these tires to doctors with certificates.

I have the record here. I have 14 tires sold to Taplin on this Monday.

Invoice and the supporting sheets received and marked Government's Exhibit No. 3.

The last invoice just referred to, of the sale on the 25th marked No. 4.



I sold my entire stock of new tires and tubes to Mr. [R. 131] Taplin, as represented by this \$4800.00 invoice, except blemished tires they wouldn't buy.

*Cross-Examination*

By Mr. Goodman:

Upon the sale of these tires to Mr. Taplin, that constituted a complete liquidation of my stock of tires and tubes. I had left one U. S. Royal tire; I notified the Office of Price Administration, I asked them permission to sell them. The secretary to D'Orr knew all about it, because he gave permission to me, and how to write that letter. I did not notify the Office of Price Administration that I had sold all my new tires and tubes to Mr. Taplin. Some representative of the office of Price Administration subsequently called at my place of business and examined those records. I gave them a copy. I executed the invoice in duplicate, in accordance with the regulation of the OPA. I gave one to the OPA. [R. 132.] That was all in accordance with the rules and regulations of the Office of Price Administration as far as my knowledge.

The representative of the Office of the Price Administration called to examine the records of this alleged sale to Mr. Taplin a few days after the sale, did not call back again. I knew Mr. Taplin was a retailer. As to the facts that he related in the letter, so far as I knew, they are all true, he was a legitimate dealer.

These trucks that were used to transport these new tires on Sunday, had an open back. The tires were clearly visible to anyone who would observe the truck in the rear, but they had doors to close up. I couldn't recollect whether they were closed. It was during the daytime. I left after they received the tires. [R. 133.]

*Cross-Examination*

By Mr. Sullivan:

I know Mr. Paddock. He sells Murray tires, with the Star Tire & Rubber Company. He offered to buy tires from me. He had a customer to buy them, he says. He was figuring to buy all the tires. The next couple of days he came and wanted to buy, and I said, "The tires are sold to Phil Taplin, with permission of the OPA."

LOUIS C. KILGORE

testified as follows: My business is detective lieutenant, Los Angeles police department. I was on duty on the 26th of May, 1942. I went on at 4:00 o'clock in the afternoon. I went to [R. 134] *the* the vicinity of 12th and Stanford Streets here in Los Angeles that evening. Detective Leland Gerty went with me. At 12th and Stanford Streets I did not immediately on arriving see any persons now in the court room. I did see vehicles there. a Dodge closed panel truck, and an International closed panel truck of about 50 per cent larger capacity; both orange or yellow colored; backed in an open shed at the back of a service station. We were attached to the auto theft bureau, detective division.

After we arrived, we checked the license numbers. We checked the motor vehicle department, and found who the owners were.

We then rolled the smaller of the two trucks, the Dodge, out a couple of feet, and got behind it. We took a crowbar and pried up on the corner of the door. I think we [R. 135] jammed one of the locks off and got the door opened on the smaller truck, and found it was completely full of new automobile tires and tubes. We

then rolled the other one forward, and pried in the corner of the door and opened it enough so that we could see that it was full of tires and tubes. I saw Louis Vitagliano there. I had a conversation with him, just in front of the trucks, right after dark; I should say about 7:30. I asked him if he owned the tires, and he said he did. He said, along with five other people in partners with him, he owned the tires. He named Mr. Rose, and Mr. Taplin, as I remember. I have forgotten the names he mentioned, but I remember those two. He said he was going to sell the tires legally to people that had priority certificates; that everything was on the square and nothing illegal was going on, nor was it contemplated. I said, "That being the case, you have no objection if we notify the OPA that these tires are here?" He said, "Certainly not. They know they are here." Then Mr. Taplin came over, I believe, and joined him. [R. 136.]

I am not positive as to the identification of Taplin because it was dark, and the station very poorly lighted. Practically all of the conversation I had, or all of it, I had with Mr. Vitagliano.

#### *Cross-Examination*

By Mr. Angelillo:

The first time I saw Mr. Vitagliano was that first evening that I was there, the 26th of May, 1942. I think it was about 7:30. [R. 137.] It is not a fact that on that occasion he told me that "the tires belong to Phil Taplin." Louis says, "There are five other people in this with me and everything is on the up and up." [R. 138.]

My memory is that Taplin said he had reported the matter to the OPA, or had already done so.

After I had seen Mr. Taplin my conversation might have been with Mr. Taplin, not with Louis. I don't remember. [R. 139.]

WILLIAM S. FITZER

testified as follows:

*Direct Examination*

By Mr. Norcop:

I am investigator for the Office of Price Administration. I have been so engaged since the early part of December, 1941. In May, 1942, I went to the location at 12th and Stanford streets, with Mr. Jack Foster, also an investigator for the Office of Price Administration. I met Mr. Vitagliano there. Mr. Vitagliano told us at that time that the tires were owned by a friend of his, Mr. Phil Taplin, and that Mr. Phil Taplin had brought them from the Perfect-Made Tire Co. [R. 140.] Mr. Vitagliano produced sales invoices for those tires, showing that they had been sold by the Perfect-Made Tire Co. to—that is, they were billed to Mr. Taplin.

Mr. Taplin came there at that location that day. That was later in the morning, and we talked with him. Mr. Taplin said that he had purchased the tires. He stated that he had planned on buying up tires wherever he could, because he believed that they would be a good investment; that he would get better prices for them as they became more scarce. [R. 141.] He stated that Mr. Novisoff was going out of business and he was very anxious to get his stock moved out as rapidly as possible, and that he was anxious therefore to have them



come and get them even if it was on Sunday as an accommodation to him. Mr. Taplin stated that they had been unable to locate a warehouse that they felt was suitable for the storage of tires, but that after the experience of having the police officers break into the trucks they believed the thing to do would be to store them in a bonded warehouse such as Bekins.

We took the license numbers of those two trucks. [R. 142.]

Later we saw the trucks on East 4th street, across from the Bekins warehouse. They were driven there by Mr. Taplin and Mr. Vitagliano. I am not positive that they were driven there by those two gentlemen. They went into the offices of the warehouse, *where* there for a period of approximately five minutes and came out, got into a passenger car and drove away, leaving the trucks standing on the street. The trucks remained there on the street until about 4:30 or quarter to five on that same day, which was Monday, the last day that we had seen them. At that time they were driven to a public garage on 9th Place at Crocker. I think it is called Market Garage. They were parked in there at that time. They were driven there by Mr. Vitagliano and Mr. Taplin.

I don't remember whether Mr. Weinstein was there at the Market Garage or not. [R. 143.]

I was present at a conversation in the Office of the Price Administration where Mr. Taplin was present. Taplin again stated that he was holding them for speculation. Mr. Taplin stated at that time that they were owned by himself and Mr. Vitagliano and Mr. Weinstein, that they owned them equally. It was called to his attention that he had previously said that he had owned them

entirely and he said, "Well, that was not the case: that Mr. Vitagliano and Mr. Weinstein also owned them."

(Mr. Norcop offers a document in evidence.)

(The document referred to was marked as Government's Exhibit No. 6, and received in evidence.) [R. 144.]

While Mr. Taplin was in that office he was asked to give to the Office of Price *Admission* (*sic.* Administration) a letter setting forth that he would not dispose of the tires without first notifying the Office of Price Administration and state the information as to how or where they were disposed of. This letter was sent in by Mr. Taplin several days later.

I saw these tires or the vans later on out at the address on City Terrace on the east side. Mr. Taplin, Mr. Vitagliano and Mr. Weinstein were there unloading the tires. As they were completing the unloading, we went in and talked with them.

### *Cross-Examination*

By Mr. Goodman:

I am not an attorney. On this occasion of May 25th, 1942, when I went out to Twelfth and Stanford streets [R. 145] I did not find any violations of any of the rules, regulations or directives of the Office of Price Administration at that time.

It was legitimate at that time, for a retailer to purchase new tires and tubes and transport them to his place of business under certain circumstances.

I subsequently investigated to determine where the tires had been purchased. I found that they had been

purchased from a dealer who had liquidated his stock. I also found that records were kept of that sale. Our office had been apprised and notified of that sale upon the investigation of those records. Subsequently I determined Mr. Taplin, who was the purchaser of the tires and tubes as disclosed by the invoices, was the holder of a retail sales license.

When I came out there at Twelfth and Stanford streets and found no violations, after I saw these two trucks moved from Twelfth and Stanford streets until [R. 146] they reached the point opposite Bekins Storage Company I did not notice or observe any violation of the rules and regulations up to that point. After the tires were moved from that place to the City Terrace district I did not observe any violations of the rules and regulations up to that point. When the tires were stored there at the building behind the service station I did not find any violation of any rules or regulations up to that point.

Subsequently I demanded that Mr. Taplin come into the Office of Price Administration. Mr. Weinstein was called into the office and I believe Mr. Vitagliano was, too, although I am not positive of that. The name of Mr. Benjamin Rose was never mentioned during any of the conversations that I had with either Mr. Taplin or Mr. Vitagliano or Mr. Taplin, as having any interest in these tires. The same is true of the names of Mr. Brown, Joseph Lieb and Phil Reznice; none was ever mentioned at any time. [R. 147.]

*Cross-Examination*

By Mr. Sullivan:

Up to the time or the date on Government's Exhibit 6, June 1, 1942, I did not find any violations of the rules or regulations of the Office of Price Administration.

R. J. CAMPAU

testified as follows:

*Direct Examination*

By Mr. Norcop:

In May of last year I was working for Bekins Van & Storage at 25 East Fourth Street. At the end of that month I recall seeing two vans parked across the street from our building. If I recall correctly Mr. Vitagliano came to our office. [R. 148.] I had a conversation with him. He was with another man at the time. The substance of it was whether tires could be stored and taken out without certificates. I said, "No, sir; they couldn't be." They just walked out; said they wouldn't store them. I observed these trucks later on during the day. I did not see them depart.

*Cross-Examination*

By Mr. Angelillo:

I did not see any other person with them on that occasion that I now recognize.

It was stipulated that the person that he identified was the defendant Vitagliano.

GEORGE M. HOOD

testified as follows:

*Direct Examination*

By Mr. Norcop:

In May last year I was working for National [R. 149] U-Drive Truck Rental on Eighth and Alameda. They also had a location at 7026 South Central. They were always left out on the lot where everybody could see them. I have not produced rental records of the National



U-Drive rental company under date of May 24, 1942. I do not recall on that date having any transaction with any of the following persons. Either Mr. Mac R. Brown or Mr. Joseph Lieb or Mr. Benjamin Rose or Mr. Phil Taplin or Mr. Louis Vitagliano or Mr. Sam Weinstein. I was there the day that one of the trucks came back. I believe it was the Chevrolet truck. I don't know what the man's name was. It was a pick-up truck with black lettering on the side, triple "T". [R. 150.]

CLAUDE GARN

testified as follows:

*Direct Examination*

By Mr. Norcop:

I am a mileage rationing officer in the Office of Price Administration. I was employed by that governmental agency at the end of May of last year as an investigator. [R. 151.] At that time Mr. White and I made an inventory of the merchandise which was found in the building there. I don't believe the serial numbers were listed there. Mr. Fred White and I both signed it, and also, Mr. Taplin at that time was requested to sign it and he did so. [R. 152.] It is made up in Mr. Fred White's handwriting, in my presence. I checked the sizes and brand names. Mr. White recorded them on the paper, and we both signed the document.

The Court: It will be admitted as exhibit next in order, subject to a motion to strike as to the other defendants if it is not connected up.

Mr. Goodman: Objection that it is incompetent, irrelevant and immaterial, it does not prove or disprove any issue in the case.

The Court: Of course, the court can't tell at this time.

(The document referred to was received in evidence and marked Government's Exhibit No. 8.)

*Cross-Examination*

By Mr. Goodman:

Mr. Taplin was present at the time I made this inventory. Part of the time he assisted me, and part of the time he did not. He did it willingly. He co-operated with me. He did not conceal any of the tires or tubes there, to my knowledge. [R. 153.]

JACK FOSTER

testified as follows:

*Direct Examination*

By Mr. Norcop:

I am an investigator for the Office of Price Administration, enforcement department, have been since the first part of April, 1942. At the end of September of last year I had a meeting and a conversation with the defendant Phil Taplin at his place of business, 3441 Malabar Street, Los Angeles. There was also present Mr. Ernest, an investigator for the Office of Price Administration. I asked for an inventory that he had promised me and an invoice showing the sale of the tires that had been stored in 3200 City Terrace. He furnished me with an inventory and also a bill of sale showing that he had sold these tires to Mac R. Brown. [R. 154.]

That is the invoice.

By Mr. Sullivan: We have no objection to this going into evidence.

(Documents produced and marked Government's Exhibit 9 and received in evidence.)

I did not see Mr. Weinstein there at Mr. Taplin's. The previous day we had gone to his place of business, and Mr. Weinstein was there at that time. Just as we arrived there Mr. Weinstein came out of the place. We asked him if Mr. Taplin was in, and he replied that Taplin was out of town.

Prior to having this conversation with Mr. Taplin I had visited the 3200 City Terrace location. We found that the tires had all been removed from the City Terrace location.

*Cross-Examination*

By Mr. Goodman:

Before I became associated with the Office of [R. 155] Price Administration I was in business for myself; Service Station. I sold new tires and tubes.

I did not know any of these defendants. On that occasion that Mr. Taplin delivered to me the invoice, the bill of sale, which has been marked in evidence here as Government's Exhibit No. 9, upon delivery of these documents I did not find any violation of any of the rules, regulations or directives of the Office of Price Administration.

I also made an investigation to determine where these tires had originally come from, and I had found that they had been purchased by Mr. Taplin from Mr. Novisoff. Our office had been apprised of the fact of that sale.

I also found on my investigation that Mr. Mac Brown, who was the purchaser of these new tires and tubes from

Mr. Taplin, was an authorized retail dealer. I found that the number he gave as a licensed retailer, on the bill of sale or invoice was correct. He had a legitimate place of business located at 2824 Sunset boulevard. [R. 156.]

RALPH R. WALKER

testified as follows:

*Direct Examination*

By Mr. Norcop:

I am manager of the Arlington Van & Storage, have been since the last of July, 1942, at 3300 West Washington boulevard.

None of the persons in this court room came to me on or about the 29th of September and asked me whether they could rent storage space for automobile tires. There wasn't any one asked me that. There was a conversation over the telephone in the late afternoon; around 10:00 o'clock, they came in between 9:00 and 10:00. A Lilly Crescent van came in there. It backed in the warehouse. They opened up the doors, and there was a load of rubber. As to whether either of the men who brought the truck there were persons who are now present here in this court room, I don't see any of them. Someone came later on to remove them. [R. 157.] There were two men. I believe the sailor over there is one. I won't say for sure.

Mr. Goodman: I will stipulate that he is referring to Benjamin Rose, but he stated he wasn't sure he was the party who came there. They removed it that same night. They came in about, oh, 20 minutes after eleven. I do not know where the tires and tubes went to from there. The storage was at our 1904 Third Avenue address. They remained there about four days.



MIKE KRELING

testified as follows:

*Direct Examination*

By Mr. Norcop:

In July last year my business was my service station located at 1516 South Main. I have been in business there 14 months at that time. My business was gasoline, motor oil, tires, accessories. [R. 158.]

I had a conversation with Mr. Rose in July, 1942 at my station. Al Oliver, one of my employees was present. The first conversation, I have a date here, the 21st of July. Whether that was the first or not, I don't know. The substance of the conversation that I, my employees and Mr. Rose had was, I had 48 new tires and 128 or 130 new tubes that I wanted to sell. The only thing as I remember, we had given him the price of the tires and tubes, and he wanted to take it up with his partner, and would let us know in a few days. He came back again. I sold them to him. This was all of my tires and tubes, my new ones. I received \$662.31 for them. Mr. Rose signed the invoice there at the time he took the tires.

(Document produced.)

That is the one I am referring to.

(The document referred to was marked as Government's Exhibit No. 10, and was received in evidence.) [R. 159.]

Possibly a week afterwards Mr. Rose came for them. He had an open truck.

*Cross-Examination*

By Mr. Goodman:

The Office of Price Administration came over and checked my books. At the time I did not know of any

rule, regulation or directive of the Office of Price Administration that I was violating. I had obtained information prior to that time that it was legal for me to make such a sale. The tires were picked up during the week, other than Sunday, and during the daytime, and in an open truck. [R. 160.]

By Mr. Goodman:

I knew Mr. Rose was operating a gasoline station. I knew what the location of it was, Olympic and Hill, if I remember correctly.

RALPH C. EARNEST,

testified as follows:

*Direct Examination,*

By Mr. Norcop:

I am with the B. F. Goodrich Company, in their conservation department. I have been connected with the tire industry about 15 years. Last year I was employed by the Office of Price Administration, from May 1st to November 1st, 1942.

In the course of my duties I met Mr. Phil Taplin. Mr. Foster was with me. I believe it was in the latter part of September, or the first of October, 1942. His place of business at that time was in the 3300 block on Malabar street. I went in and looked around. We asked him what had become of [R. 161] the new tires that were stored on City Terrace. He had sold them. That was the substance of what happened.

I have seen Mr. Taplin several times in his place of business. Mr. Foster was with me on the next occasions.

I do not recall any subsequent conversation with him about new tires or tubes.

I know Mr. Weinstein by sight. The only conversation I had with Mr. Weinstein was in company with Mr. Foster a day or two days prior to the time I met Mr. Taplin. Mr. Weinstein was in front. He later went into his place of business. We asked him about the whereabouts of Mr. Taplin and he informed us that Mr. Taplin was out of the city, and would return in a few days. I have talked with Mr. Vitagliano. [R. 162.]

When we talked to Mr. Vitagliano I was in company of Mr. Foster. Mr. Foster did all the talking. I was in the company of Mr. Foster, in connection with another case.

JOHN DUNDAS

testified as follows:

*Direct Examination,*

By Mr. Norcop:

I am with the Office of Price Administration, chief investigator, have been with the Office of Price Administration since May, '42. I had a conversation with Mr. Taplin, in the Office of Price Administration, about the end of May, 1942. It was about the day before the date of the letter which had been introduced in evidence here from Mr. Taplin to me, which was June 1st. There was present Investigator [R. 163] Fitzer, Foster and myself and Mr. Taplin. Mr. Taplin stated to me that he had acquired the tires from Novisoff, and he and this Vitagliano and Weinstein were equal partners in the ownership of the tires. I asked him to advise the Office of Price Administration before he disposed of any of these tires. He stated that he would advise us before he did so; that he intended to comply with the regulations entirely, and that if he did dispose of the tires in any way, or move them from their present location, that he

would advise us. It was subsequent to that that I received the letter which is in evidence.

There was a reference in our conversation to an inventory that had been taken of the tires at 3200 City Terrace, and Mr. Taplin stated in that regard that those were tires he had purchased from Mr. Novisoff. I said I was told that there was a shortage of this [R. 164] inventory as prepared by the investigators when compared with the bill of sale from Novisoff. His reply in substance was that he did not know what occurred to them.

*Cross-Examination*

By Mr. Sullivan:

I am a lawyer. I knew somewhat about the rules and regulations of the Office of Price Administration at that time; I knew that it was not required that Mr. Taplin give any letter to us at all. It was not demanded of him, however. It was received by me later. As to whether I told him at that time that it would be well for him to store his tires, I don't recall having said anything like that.

At the time I talked to Mr. Taplin in the Office of Price Administration, I did not find, other than the discrepancy I referred to in the inventory, any other violation of the rules and regulations or directives of the Office of Price Administration at that time. The discrepancy was a violation of the regulations in the sense that there was a failure to account for the tires that had been received by him in the bill of sale from Novisoff. [R. 165.]

He said, in effect, as I recall it now, that he did not know what had happened to these few tires that were missing between that time and the date when the inventory was made.



Mr. Taplin assured me, not once but several times, of his desire to handle these tires legitimately, and it was in that regard that the letter was suggested. [R. 166.] Any dealer could sell a tire if he had a certificate at that time, but he could not sell it to other dealers unless he had a certificate. At that time the regulations provided that a dealer might sell tires to another dealer, just for the purpose of going out of business.

He asked us what the wording of the letter should be and it may very well be we did suggest the wording, I don't remember. I did not tell him at that time that I suggested the letter that the law did not require him to do that.

DOUGLAS F. SCOTT

testified as follows:

I am a trust officer with the Bank of America. In August 1942 I was working at the Hollywood main office on Ivar and Hollywood boulevard. [R. 167.]

I know Mr. Benjamin Rose. He is the gentleman with the sailor's uniform. In the month of July I first talked with him at my office in the bank in Hollywood. He asked us whether we would rent to him the premises at 613 North Virgil. We eventually rented the place to him on a monthly basis, beginning on August the 1st, 1942, at \$10.00 a month. He occupied the premises there from August the 1st to October the 1st. He said, as I remember, that his business was to purchase equipment and sell it.

*Cross-Examination,*

By Mr. Goodman:

We subsequently served notice on Mr. Rose to surrender possession of the premises when we leased that store. He did not tell me at the time what the type of equipment he was going to store there was. He said he wanted to store some furniture and equipment.

*Redirect Examination,*

By Mr. Norcop:

I asked him whether it was heavy equipment. He said it was not. [R. 168.]

HORACE B. RANDALL,

testified as follows:

*Direct Examination,*

By Mr. Norcop:

My business is insurance and motor club at 5901 Sunset boulevard. In 1942 my business had control over a building there. I have a plat of my property there. The back part of the building, where the garage is was on the premises when we purchased it in 1935.

I met Mr. Benjamin Rose just once. I had a conversation with him with respect to this property. That was on or about September 29, 1942. The space he rented from me is the space in the upper lefthand corner on this plat. He paid rent from October 1 to October 31.

Mr. Norcop: I offer the plat in evidence.

Mr. Goodman: I object to it upon the ground that it is incompetent, irrelevant and immaterial.

The Court: What is the materiality of the exact location? [R. 169.]

The Court: I will admit it as exhibit next in order.

(The document referred to was received in evidence and marked Government's Exhibit No. 11.)

*Cross-Examination,*

By Mr. Goodman:

There was some view there from the street; you could see down two driveways between three signboards. There are windows in the upper part of the door in this structure which Mr. Rose rented. I couldn't say how many. He told me tires and batteries. [R. 170.]

TED W. MENDENHALL,

testified as follows:

I am a clerk with the Hertz truck lease. With the truck rentals, located at 718 East 3rd. I have produced a record of my company in response to a subpoena.

I rented trucks to Mr. Rose several times. He came in and got this truck at 10:37 P. M., October 1st, and returned it 2:14 P. M. October 2nd; 76 miles.

(The document referred to was received in evidence and marked Government's Exhibit No. 12.)

This record shows a Chevrolet refrigerator, it says, panel truck, all closed. I saw the truck when it was returned. When it was returned it had four tires in it.

(Witness examines tires.)

These are the same four that was in the truck when it came in. [R. 171.]

Mr. Norcop: We offer these four times into evidence at this time.

Mr. Sullivan: We object to their materiality.

Mr. Goodman: I would also like to ask the witness on *voir dire*.

The Court: Yes, I will permit it.

(By the witness):

I remember that Mr. Rose didn't bring the truck back. Mr. Rose took the truck out.

Mr. Goodman: We now object to the introduction of the tires on the ground it is incompetent, irrelevant and immaterial, and no foundation laid.

The Court: The objection is overruled. [R. 171.]

DON BEGLEY,

testified as follows:

*Direct Examination*

By Mr. Norcop:

I am with the same Herzt-U-Drive Company, at the same location as the previous witness. I saw these four tires—Exhibit No. 13 at my place of business. Someone called there and discussed with me having me turn over the tires to them. I have been looking and haven't recognized anyone here, as I remember. Then I turned the tires over to the government agency.

*Cross-Examination*

By Mr. Goodman:

I was not there when the truck was returned. I did not make an attempt to discover who owned the tires. I found that they [R. 173] were locked in my office at the time. I believe it was the FBI that was called on the thing. We didn't make any investigation.



*Cross-Examination*

By Mr. Sullivan:

The boy that did check it in called the FBI. That was all we had to do.

By Mr. Goodman:

(By the witness):

Someone called for those four tires after the truck came back and I spoke to him. We did not return them to the man who called for them because we had been told to hold them. If that man who called for the four tires [R. 174] that I speak about is in the courtroom, I don't recognize him.

SAM KELBER

testified as follows:

*Direct Examination*

By Mr. Norcop:

My present business is buying cattle in North Dakota. I was in business in Ontario, California. My business there was primarily tires.

I know Sam Weinstein. In the summer of 1942 I had a conversation with Mr. Weinstein at Desmond's, here in Los Angeles. There was another party with him.

(Stipulated that he is referring to Louis Vitagliano.)

My wife was with me. The substance of the conversation was that I had a lot of new tires; I had decided to liquidate my tire business. During the course of the conversation with Mr. Weinstein he told me [R. 175] he thought he could find a customer for me. He called me later by telephone. He had a customer, he

thought, and he made an appointment with me to come out to Ontario, to my place of business. He came out there with Mr. Rose. I think at that time there were just two of them that came to my place of business.

We discussed the price of the tires. We arrived at a rough figure of \$4,400.

I heard from them again. They called me, and I made an appointment to meet them in Los Angeles. I met Mr. Weinstein down here, at a Shell service station. It was a station with a parking lot in conjunction with it, Tenth, Eleventh or Twelfth, and possibly Hill. I met Mr. Weinstein there alone. [R. 176.] We went to the bowling alley. We met Mr. Rose there. The three of us spoke a few words; the bulk of the conversation was carried on between Mr. Weinstein and Mr. Rose out of my hearing. It carried on about thirty minutes. Then we talked, and Mr. Rose said he could handle the tires, and gave me a hundred dollar deposit cash, and we made arrangements whereby he would come out on Sunday. That was Sunday, August 1st when they came out, at my home. They took delivery of the tires that day. They came in Mr. Weinstein's car, Mr. Rose and Mr. Weinstein, and Mr. Rose's brother, as I generally understood, and two trucks, two vans.

I do not know who was driving those vans. It was not any of the people I have described. I don't remember Mr. Weinstein helped load them or not. When my brother came in he helped. During the loading, a man and [R. 177] woman stopped by. They had a conversation with Mr. Rose. I did not hear it. I made out an invoice of the tires that I was selling. I had a conversation with Mr. Weinstein and Mr. Rose. Mr. Rose told me that he had a number of service stations.

(A yellow slip is produced.)

That is one of a triplicate copy out of the register we used. This reflects the sale on that date, August 1st. This at the bottom is in Mr. Rose's handwriting, which reads: Ben Rose.

These five sheets that you are now handing me are tally sheets.

These bookkeeping or accounting appearing two sheets, was an inventory, made out of our new tires. My bookkeeper made that out. This other sheet you are now handing me is a tally . [R. 178.]

(The documents referred to were received in evidence and marked Government's Exhibit No. 14.)

Mr. Louis Vitagliano was there. He wasn't there all the time, though. He was there sitting in the front room.

### *Cross-Examination*

By Mr. Goodman:

I had decided to liquidate my business and go to North Dakota prior to the time that I met Mr. Weinstein. I moved the new tires and new tubes up to my home. At the time Mr. Weinstein first contacted me, and subsequently, when Mr. Rose purchased the tires, the new tires and tubes were already at my home. I planned, if the tires were moved on Sunday to leave on Sunday, but not by train. I was very [R. 179] anxious that these tires be removed so my family could make the trip with me. I don't know if I suggested that they come here Sunday, or they suggested it, or both did. I know I wanted them out of there as soon as possible, so that we could go. That invoice was prepared on Sunday.

I sold the tires to Mr. Rose at cost, it was slightly above cost. I don't remember the exact percentage that we figured. There was a percentage figured above cost, because I remember at that time the Government allowed a raise.

Just prior to the sale to Mr. Rose I had a retail sales license, to deal in the sale of new tires and tubes, Before I made the sale to Mr. Rose I contacted the Office of Price Administration and I told them I was going to make the sale. The Office of Price Administration, Mr. Stevens, was trying to help me find the customer for them. He said if he could find a customer for me he would do so. [R. 180.]

I did not contact the Office of Price Administration again when I made the sale to Mr. Rose.

I did not know of any rule, regulating or directive of the Office of Price Administration that was being violated at the time the sale was made. I was told that it was a perfectly legal sale. I could sell to another tire dealer, but I couldn't sell to the consumer without a permit, or back up to a wholesaler.

Mr. Rose exhibited to me his seller's permit issued by the Board of Equalization of the State of California at Los Angeles. Mr. Rose gave me the number. He paid me the \$100.00 deposit, brought out a cashier's check for \$4,400.00, and we did a little figuring and there was another \$75.00 which he paid me by personal check. [R. 181.]



*Cross-Examination*

By Mr. Angelillo:

On the first occasion that I met Mr. Vitagliano at Desmond's I did not have a conversation with him. He was not in on the conversation. Mr. Weinstein called me first and then he and Mr. Rose appeared at my place of business. Mr. Vitagliano did not in any wise help load the trucks or remove the tires. I didn't have any conversation with him. He excused himself to go downtown to get a cigar. [R. 182.] I remember that.

*Cross-Examination*

By Mr. Sullivan:

This meeting at Desmond's was not by prearrangement with Mr. Weinstein. I knew Mr. Weinstein before that. He told me that he was merely trying to do me a favor; in other words, find me a customer, and he did expect something out of it. He told me he wants some from me and he was going to try to get a commission from Rose. Mr. Weinstein did not pay me any money though, at all.

*Redirect Examination*

By Mr. Norcop:

I paid Mr. Weinstein some money.

He told me that Rose was not giving him anything [R. 183] and that he hadn't gotten any money from Rose yet; that I would give him I should give him out of sight of Rose, which I did.

MRS. STELLA KELBER

testified as follows:

*Direct Examination*

By Mr. Norcop:

I am the wife of Mr. Sam Kelber who was just on the witness stand. I was at my home when Mr. Rose purchased some tires. I had a part in the transaction that day. I saw there that Sunday while the tires and tubes were being loaded, the two drivers of the trucks and Mr. Rose and Mr. Weinstein, my husband, and this Floyd Mason [R. 184] and my brother-in-law and myself. And I think Louis was there. I am almost positive he was.

(Stipulated she referred to Louis Vitagliano.)

Mr. Rose and I had just a general conversation. He said he had four or five service stations and he was going to sell the tires to the service stations.

SAM KELBER,

recalled.

*Recross-Examination*

By Mr. Sullivan:

I paid to Mr. Sam Weinstein \$50, no more.

BILL SOUKESIAN

testified as follows:

*Direct Examination*

By Mr. Norcop:

My business is radiator repairing and tire business located at 736 North Broadway. I am in business with my brother, Harry Soukesian. My brother and I have been in business [R. 185] there about 14 years. I know Mr. Weinstein. I first met him at our place of business

last year sometime, in 1942, a summer month, probably around September. Mr. Weinstein and I were alone. He asked me if we had anything to sell in the way of truck tires or anything; he was in the market to buy used tires; and I told him at the time we were not in the market to sell anything.

On a later occasion I told him I might sell some of my new tires to lower our stock.

I met Mac R. Brown after I had met Mr. Weinstein. He came with Mr. Weinstein. There was no one else present besides us three. I was not very interested because I had another prospect that I was discussing sales of the tires to. [R. 186.] On a later occasion Mr. Brown asked, I think, at what prices I might be interested in selling. I told him "cost—plus five per cent." He said he had a few gas stations that he needed merchandise for. I did sell to him. Mr. Brown, when I arranged to sell the tires to him, before I delivered them to him, said it would be very easy for him to dispose of them because he had so many different connections, such as these aircraft factories, where they needed tires and where they were able to get these certificates much easier.

I have the invoices that carry the date and complete transaction.

(Invoices produced.)

(The document referred to was received in evidence and marked Government's Exhibit No. 15.) [R. 187.]

Those are the invoices to which I have just adverted. This invoice is made out to "Rappan Service." That is his service station, he said, at the time, at 2824 Sunset boulevard. The invoices show the total price paid by Brown for all these tires; it is close to \$5,800; the addi-

tion to all the amounts should sum up to around \$5800. I had Mr. Brown sign every one of the invoices.

There was used in transporting the tires away from my station a Chevrolet truck. It is sort of a panel truck. It is all closed in.

Besides Mr. Brown and myself there were there on that date about two or three men.

As to why Mr. Brown signed twice on one of these pages, that was because he took some tires [R. 188] in his own personal car and then the truck came back and took the others. He took the "4-600-16, 6-250-16 Standard Firestone and 1-600-16 tubes" in his personal car, six tires and one tube.

About that part of the delivery he said he had a sale and that he needed it right away.

On the first day, first of all, I called up the OPA and made sure that it was all right for me to dispose of my tires, and they advised me that it was all right, just so I made three forms of invoices so they could refer back to them at any time that I wanted to, and as long as they gave me their permission I went ahead and sold to Brown.

Mr. Brown is the only defendant that I had anything to do with; and the only one that I know clearly in my mind that was there. These other men loaded the truck. [R. 189.]

I asked them what they were afraid of and Brown said they were afraid they might be hijacked.

### *Cross-Examination*

By Mr. Goodman:

When I met Mr. Weinstein, as to my new tires and tubes, I was not exactly trying to find customers for them, that is, I was not very interested in it. I had one other



prospect besides Mr. Brown. His name was Reuben. [R. 190.]

I did not liquidate the complete stock. I had left about 100 tires. I have since sold them. The balance of the tires left were sold individually, two or three at a time, on certificates. I always carried a stock of new tires. I have bought new tires right along from the factory.

I contacted the office of Price Administration before I made a sale. They told me it was perfectly all right to sell to a tire dealer. Mr. Brown gave me his address. I went by and noticed his place, and noticed the name on the service station, so I figured it was a safe transaction. He also executed a certificate. He executed a card, with his signature on it, and his sales tax number on it. [R. 191.]

C. A. HUMBERT,

testified as follows:

My business is the moving and storage business at 4428 Melrose Avenue. I have been in business there approximately eight years. We do business under the name of Bay Cities Express & Transfer.

I know Benjamin Rose. I have known him since about the middle of last August. I had a conversation with him before that; in the middle of July. I walked outside, and met him outside. The conversation was about getting a couple of vans to move some accessories, automobile accessories. At that time the trip was to have been from Pasadena. He made a tentative arrangement for a man to come on Sunday. I saw Mr. Rose on August 2nd, 1942.

I went to Ontario. My wife went with me. [R. 192.] When I arrived at that place on 5th Street my two vans

were there. One was backed in the driveway, and one was sitting on the street. They were getting tires out of the garage and tallying them.

I can identify anybody in the court who was there, Mr. Rose, and Mr. Weinstein were the only two, and the truck drivers. There was also a young man that was up on the stand a while ago, and his wife, and my two drivers. That is all I know of. I had a conversation with Rose while I was there. I asked him what was going on, and he said it was all right. I was there, I imagine, five minutes, and I left for a short time, and came back again. I was there when the trucks had been loaded and left. One driver was Don Parmalee, and the other Sam Dawden. The vehicles of mine used that day was a GMC ton and a half covered van, and a Chevrolet ton and a half covered truck or van. My original van that I always had, did not have on the outside any labeling or name: we were repainting it, and it did not have any lettering yet. The other one was labeled Lilley Crescent Van & Storage. I followed the trucks into Los Angeles. Mr. Rose told me to meet him at the corner of Santa Monica [R. 193] and Virgil in Los Angeles. I saw him there. He had us drive down to 613 North Virgil, and drive in back, in the lot. Mr. Rose was there, and a young boy, I imagine about 18 years old. I don't know him. And the truck drivers. We pulled the trucks in. Then we decided to have lunch. We came back, and we backed each truck into the back door and rolled the tires off. That room that I put the tires in was not up to the street front. It was about one-third of the building. Both truckloads were unloaded into that room. The tires were all wrapped; some of them were loose, but they

were wrapped. The tubes were in boxes. The room in which the tires were put was all boarded up, sealed up; the windows were all boarded up. Mr. Rose told me if I needed any tires he would go down to the OPA for me and save me a lot of red tape.

The next business I had with Mr. Rose was on August 22nd. The only conversation I had with Mr. Rose concerning the trip, before I made it was just to meet him at that address. I made the trip myself. I took the same Chevrolet van, Lilley Crescent. The one that had on it Lilley Crescent Van & Stor- [R. 194] age. I went to 1850 East Colorado. There were quite a few people there. The only ones I remember were Mr. Rose and Mr. Weinstein. I would say about five or six people were there. We all formed a line, and rolled the tires to the truck, and loaded them up. I did not have any conversation with Mr. Weinstein out there. Mr. Rose told me to take them to the same place where I had taken the previous loads, and he would meet me there. That was 613 North Virgil. I did that. I was alone as the driver. When I got over to 613 North Virgil, Mr. Rose met me there, and we unloaded them. Inside of the warehouse—there weren't many tires there from the first load.

When I first brought the two loads in from Ontario, the room was I would say better than three-quarters full of tires. There were not other tires in there at the time I unloaded from Ontario. [R. 195.]

Around the floor of the room on that day, the 22nd, there was quite a pile of tire wrappings. I gave Mr. Rose an invoice. He signed my copy, and I gave him the paid bill. Referring to an invoice of the Bay Cities Express & Transfer 8-22-42—that's mine.



(The document referred to was received in evidence and marked Government's Exhibit No. 16.)

(Reading): Shipper, Rose. From 1850 East Colorado to Virgil and Clinton. Auto Accessories. Three hours at \$4.00 an hour, \$12.00. Van. My own name signed.

I was told to put down "Auto Accessories." Mr. Rose told me to put that down. With respect to the September 29th trip, it was some days before that, he came to [R. 196] the office. My conversation with him was just on releasing the vans for that particular trip. The trip was supposed to have been Friday. It was changed. I went on the 29th. I drove one of the vans myself, and another man drove my other van. Mr. Rose asked me to drive out to Evergreen, and turn left half a block and park and wait. The conversation occurred in my office. Besides myself and Mr. Rose, Max Cramer, the other driver, was present. No one else of the other defendants here in court was present.

I used two trucks labeled Lilley Crescent. One was a Ford and one a Chevrolet; both one and a half ton trucks. They were closed vans. We drove over to Evergreen and Brooklyn and parked there for about an hour. It was late in the evening; very late—5:00 or 5:30. We parked over on Evergreen about an hour, and finally a man driving a red pickup came over to the trucks, and we followed him. That man was the defendant Mr. Weinstein. We followed him, and went up to City Terrace, on the corner of Wabash and Thornton, to a service station and repair place. We backed one truck in at a time, and loaded them. [R. 197.]



As to whether anyone else assisted me in loading the tires—Mr. Weinstein, Mr. Rose, and there was somebody there. Nobody else I see in the courtroom was there that I can remember. Half the tires went on one truck, and half on the other.

The truck I had at the end, it was pretty well filled up. Tires were loaded in there. They were wrapped tires. I couldn't say whether there were any tubes. The truck was to go to the second driveway west of Brooks Randall on Sunset Boulevard, and turn in there and wait. [R. 198.]

The first truck, that Cramer was driving was to go to the Washington Van & Storage. I couldn't say who said that, or who gave that direction. After I got out to Brooks Randall Mr. Rose was already there. I backed the truck in, and unloaded it. Mr. Rose and myself was all there were there.

Exhibit 11 looks something like the location where I took this load of tires. There was not any tires in there that I could see. There was no light in the room. We just laid them, in about four or five piles, clear out to the door; almost to the door. It was quite dark when we got through, around 8:00 o'clock. Then I went back to my business. The other truck hadn't got in yet. I went home.

This invoice of the Bay Cities Transfer dated September 29, 1942, does not reflect the transaction. I had a conversation with Mr. Rose about this invoice. My wife was present. Mr. Rose wanted to know if the OPA had called up. I told him no. He wanted to know if they had asked me where the tires went to, and I told him if they asked me I would have to tell them, so he wanted [R.

199] to know if I would tell them he took the truck from my office. I said I had to put the destination on my bill, where it was, and where I took it. Finally we made up that bill there with Mr. Foster's permission. This did not reflect the destination where I took the merchandise. I made it at Mr. Rose's request.

(The document was offered in evidence.)

This pink carbon invoice dated September 29th is one of my invoices with respect to this transaction on September 29, 1942. This carbon was made at the same time as the original. This white invoice is the original of the pink one.

(The documents referred to were received in evidence and marked Government's Exhibit No. 18.)

With relation to the designation on that invoice of the character of the merchandise hauled—I put on "auto accessories." Mr. Rose asked me to do that the first trip, and as to the other trips I couldn't say. This relates to the truck load that was taken by Mr. Cramer and driven away from the City Terrace address previous to my going to Hollywood. They were both trips; both trucks. [R. 200.]

This white invoice from Bay Cities Express & Transfer, dated 8-2-42, is an invoice that bears on the first job—the Ontario job.

Mr. Norcop: We offer it in evidence.

Mr. Goodman: I object to it on the ground it is incompetent, irrelevant and immaterial.

(The document referred to was received in evidence and marked Government's Exhibit No. 19.)

*Cross-Examination*

By Mr. Angelillo:

As to the persons whom I saw at Ontario in connection with the loading or handling of the tires—the only two that I can identify were Mr. Weinstein and Mr. Rose. I do not recall seeing the defendant Mr. Vitagliano here before I came to this courtroom today. [R. 201.]

Further

*Direct Examination*

By Mr. Norcop:

When I was at Ontario, I was told to cover the vans all good for fear of hijacking on the way. Mr. Rose told me that.

*Cross-Examination*

By Mr. Goodman:

At the time that I first learned that I was going to transport tires for Mr. Rose and I had a conversation with him. He told me that all of the tires were registered with the Office of Price Administration. He told me that the tires were not stolen, and that it was a legal transaction.

On the occasion that I made the second trip or the second hauling for Mr. Rose to Pasadena, it is a fact that that was in broad daylight on Saturday. On that occasion, I knew before going to Pasadena that I was going to haul tires and tubes. The second time, I knew it was tires. I suppose I knew when I went out on the second trip, before I got to my destination, where I was to pick up the new tires and tubes, that I was going to pick up new tires and tubes. The third occasion was when I delivered them to Brooks Randall. [R. 202.]

On this third occasion, when I went out to the Brooks Randall Company, when I arrived at Brooks Randall, I did not say it was dark when I got there. It was dark when we got through unloading. By the time we got backed into the door it was just getting dark then. The rear of my trucks were covered with tarpaulin. They were not paneled. These tires were all inside completely covered up. Except the first occasion, we had furniture pads over the tires to hide them, under Mr. Rose's orders. The reason he gave me was that they might be hijacked. Mr. Rose was the only defendant who hired these trucks from me. He is the only one that paid me. I had no business transactions with the other defendants in this case. Not a bit; no.

I was contacted by a representative of the Office of Price Administration after these deliveries, and before the third delivery. When I made the third delivery, the one to Brooks Randall Company, I had already spoken to the representative of the Office of Price Administration. That was Mr. Foster. [R. 203.] I had told him on that occasion that I had transported tires for Mr. Rose from Ontario to a place on Virgil, 613. The first time he came out I didn't know he was going to make another delivery. I was told by Mr. Foster if I was asked to go ahead and make it. He told me to make it.

MRS. JOSEPHINE HUMBERT

testified as follows:

*Direct Examination*

By Mr. Norcop:

I am the wife of Mr. C. A. Humbert. I was working in my husband's business at 4428 Melrose Avenue in August 1942. I know Mr. Rose. At Ontario I saw Mr.



and Mrs. Kelber, and Mr. Rose. I couldn't place any of the others right now. I did not see Mr. Rose in my office again until the Friday before the 22nd of August. [R. 204.] I know that they came in on September 29th and wanted two vans. I was there then. The persons I refer to are Mr. Rose and the gentleman back there with the mustache. (Indicating Mr. Mac R. Brown.) And this man at the end of this table here. (Indicating Mr. Vitagliano.) In my presence, Mr. Rose and I can't remember who he talked to, but he said that they should not make the same mistake that they had previously made of loading both vans at the same time; that they should load one van at a time. [R. 205.]

Mr. Brown and Mr. Vitagliano were there.

I am positive that Mr. Vitagliano was present there on this September the 29th. At the time that this conversation that I spoke of in which Mr. Rose said, "We should not make the same mistake of loading both vans at the same time. Rose was talking to both Mr. Brown and Mr. Vitagliano. I was in the front office of my building there, sitting at the sewing machine. I couldn't say whether or not Mr. Vitagliano answered Mr. Rose, as I can't remember the voices, but I do remember Mr. Rose. I can't remember whether Mr. [R. 206] Brown answered Mr. Rose. I don't know whether they said anything.

### *Cross-Examination*

By Mr. Angelillo:

The first occasion that I saw Mr. Vitagliano, so far as my knowledge is concerned, is the 29th of September. I did not see him at Ontario. I could be mistaken about that person's identification, but he does look like the man that was in the office that day. I may be mistaken on that

one. Not the other one. Mr. Vitagliano fits the description I just gave you. But I am not sure about it. Not positive. [R. 207.]

REUBEN SLAVETT

testified as follows:

*Direct Examination*

By Mr. Norcop:

My business is the tire business. Located in Pasadena, 1850 East Colorado Street. I know Mr. Weinstein. I first met Mr. Weinstein at a service station on Mission Road, the Three Jacks. That was during the month of August, 1942. I had a conversation with him then. While I was talking with the other fellow he came over and joined in the conversation. It came out that I had some new tires and tubes which I was interested in selling, and he mentioned to me that he possibly could get a buyer for me. [R. 208.] On a later occasion I met Mr. Weinstein down town in Los Angeles. We went out to get in touch with the man that later turned out to be Mr. Rose. We met Mr. Rose later on around the vicinity of Third and Vermont, in Los Angeles. The three of us had a discussion about the purchase of the tires. So Mr. Rose and Mr. Weinstein and myself were sitting in the car, and I told Mr. Rose that I wanted \$3300 for the merchandise, and he offered me \$3000, and I said "No, \$3300 is the price." Then Mr. Rose and Mr. Weinstein got out of the car, and walked up the street. [R. 209.]

Mr. Rose still offered \$3000. I figured I wanted to sell the merchandise; I did not want it on my hands. I said, "I will split the difference, and make it \$3150." So Mr. Rose still insisted on \$3000.

Then we left. Mr. Weinstein went with me and Mr. Rose went off by himself. Mr. Weinstein and I saw Mr. Rose later in the day at his gas station. The deal was finished there for \$3150.00, and he gave me a deposit of \$200 in the form of a personal check. The merchandise was supposed to be picked up Sunday morning, at my place of business. The time set was 8:00 o'clock in the morning. I got there late, at 8:30, and when I got there there was a note on the door, by Mr. Rose. I did not understand clearly about that. Anyway he had to be with the truck at a certain place, at a certain time, and therefore he had to leave before I got there. [R. 210.]

I told Mr. Weinstein what happened that morning. He did not seem to understand; neither did I. The next morning, I went down to see Rose. I had a conversation with him, and he told me the deal was all off. He did not want any part of the deal, as long as Mr. Weinstein was in it. Later I saw Mr. Weinstein and he told me that he had another prospective buyer. He told me he had another prospective buyer, and I met him, and we went to this place at 12th and Stanford, and there I was introduced to Mr. Vitagliano. A few minutes later another man approached, so Mr. Vitagliano introduced me to this fellow as the prospective buyer, and I spoke to him. [R. 211.]

I don't know what the name of the man was that I was introduced to. He is not in court so far as I know. I got a \$50 deposit from the prospective buyer, and told him also I still had the check of Mr. Rose, and my receipt for the [R. 212] merchandise, and before the deal would be final I would have to give him the check back, and get my receipt back.



The prospective buyer told me his place of business was on San Fernando Road, in Glendale. That deal did not go through. After this deal was off, I went back to Mr. Rose, and told him that the other deal was off, and if he wants to he could have the deal. No one was with me when I went back to Rose. He accepted the deal. The deal was then \$2900. He said he would take care of Mr. Weinstein for his commission, and I would realize \$2900 out of it. He gave me a deposit. He had a cashier's check in his pocket for \$2750 made out to me.

The time I saw Mr. Vitagliano again was when Mr. Rose came the next day to pick the merchandise up, to my place of business in Pasadena. All the merchandise was put in the truck, and the truck drove off, and I said to Mr. Rose "How about my other \$150, I have got coming from the balance" which he did not give me yet. He told me to forget about [R. 213] it that I made enough money on the deal. I persisted in getting my \$150, which I had coming.

Finally he settled for \$75, and he said he may give me the other \$75 sometime. So he gave me a check for \$75.

These three sheets of invoices of the Dandy Tire Company, dated August 22, 1942, are the invoices that I made, representing the transaction I just described. I made out three individual copies. The copy I have, and I gave one to Mr. Rose, and this one to the investigators. Mr. Rose signed the invoices. The permit, retail sales number, was put on there in my presence. [R. 214.]

(The document referred to was received in evidence and marked Government's Exhibit No. 20.)



Mr. Rose after this transaction had been completed, mentioned to me if I knew anybody else that had new tires to sell to get in touch with him, and he would see to it that I got something out of it.

*Cross-Examination*

By Mr. Goodman:

I investigated to determine whether or not Mr. Rose was a legal retailer before I made the sale. I knew that he operated one or more stations in the City of Los Angeles where he had been selling new tires and tubes. He exhibited to me his retail sales license. The OPA office told me to make three copies of the invoices, and to be sure that the [R. 125] purchaser was a retailer and in business. The tires were delivered to Mr. Rose on a Saturday. It was around noon, maybe an hour before. Besides myself and Mr. Rose there was present Mr. Vitagliano, Mr. Weinstein, and the truck driver. I never saw Mr. Mac Brown there. I never had any contact with Mr. Mac Brown at all during this entire transaction. There were 212 new tires, and 798 new tubes.

My records were checked about February, the merchandise was checked by an OPA man. They have been examined. At that time I gave them a copy of the invoice. Upon the sale of these tires and tubes to Mr. Rose, that practically liquidated all my tires and tubes that I had at that time. [R. 216.]

*Cross-Examination*

By Mr. Angelillo:

I am acquainted with Mr. Soukesian, on North Broadway. I never tried to buy his stock. I tried to sell his stock for him. I was negotiating with Ben Rose only.

On the occasion that I met Mr. Vitagliano he was not to be the purchaser. All I know is that Mr. Weirstein and I went to 12th and Stanford, Mr. Vitagliano's place of business. There I was introduced to Mr. Vitagliano, who, in turn, introduced me to somebody else, and that was all I know. I don't know the man's name. No deal was there. [R. 217.]

As to the next occasion when I saw Mr. Vitagliano and Mr. Weinstein had already been with me. Mr. Vitagliano came along; that is all I know. He did not partake in any of these negotiations, except to probably interject some remark, "to get it over with." That is all it appeared to me. In other words, he was getting tired of hearing we two argue or barter.

J. C. COOLEY

testified as follows:

*Direct Examination*

By Mr. Norcop:

My occupation is photographic work, have been 22 years. In October [R. 218] of 1942 I went to 613 North Virgil Street. I made photographs of the interior there. I think those two are duplicates. There are three different pictures. They are unretouched negatives.

(The photographs referred to were received in evidence and marked Government's Exhibit No. 21.)

*Cross-Examination*

By Mr. Goodman:

This pile of paper in front of the picture was made from two or three different views. One or more of the men might have taken these papers together and made a pile out of them at my suggestion.

SAM PARSNER

testified as follows on direct examination:

My business is tire business 524 West Pico; tires and recapping. I first became acquainted with Mac R. Brown the day of our transaction in September. I sold him some tires September the 9th, 1942. He came into the store and wanted to know if I had anything to sell. Vitagliano was with him. I sold him all I had, 38 tires. The vehicle they had when they took delivery was a red panel. We have an invoice for what I received for the tires. That is our invoice. [R. 224.]

(The invoice referred to was received in evidence and marked Government's Exhibit No. 22.)

As to the conversations, I told them I would have to find out if I could sell them to them, and they said for me to get in touch with the OPA. Mrs. Parsner called the OPA and they said it was O. K. to go ahead and sell. We sold him the tires.

*Cross-Examination*

By Mr. Goodman:

The only man in connection with the sale of these 38 tires was Mr. Mac Brown. I had no business with Mr. Benjamin Rose. Mr. Vitagliano helped him load. Mr. Brown paid us the money. When I sold the 38 tires, that is all I had. I had some tubes, and they were supposed to buy them, but they didn't. We got the resale permit of Mr. Brown. [R. 225.] He signed a card to that effect. I found that he certainly had a station. The tires were delivered to him during the day, broad daylight. [R. 226.]

*Cross-Examination*

By Mr. Angelillo:

There wasn't any name on the truck that I can remember. It was a red truck. Mr. Vitagliano helped us get the tires out of the room and load the truck. He did not tell me he had a station. He didn't tell me why he was there. He did not say that he wanted to do business in a hurry. We just went up in the room and loaded it, took our time. [R. 226.] Mr. Vitagliano was wearing service station clothes. I couldn't say he drove the truck away. [R. 227.]

*Redirect Examination.*

(The government then called Mrs. Parsner was received in evidence without objection.) [R. 227.]

JACK FOSTER

testified on further

*Direct Examination*

By Mr. Norcop:

Subsequent to the 9th of September, 1942 I had a conversation with Mr. Brown respecting that invoice of Mr. Parsner's at Mr. Brown's place of business—Rappan Service. I asked Mr. Brown if he had purchased Mr. Parsner's tires and Mr. Brown stated that he didn't want to say whether he had or not. He said, "Well it doesn't have my signature on it." I told him. I want to know if he had bought the tires that he said he had sold them. He told me that he would produce the invoice; that he didn't have it at that time and if I would come back the next day, why, he would show me the invoice. On the follow-



ing day Mr. Brown showed me the invoice of which he gave me a copy. It had "T & M Tire Service, 1620 South Broadway." That is the copy he gave me. [R. 228-229.]

(The document referred to was received in evidence and marked Government's Exhibit No. 23.)

Mr. Brown had four or five new tires. He told me these tires had been there for a long time, and he wiped his hand across the dust to show me that they had been there for some length of time. [R. 229.]

### *Cross-Examination*

By Mr. Sullivan:

When I first went to Mr. Brown's place of business and I asked him if he had purchased the Parsner tires, he told me that he did. [R. 229.] As a matter of fact, when I first appeared at the Brown place of business, and I was told to come back the second day with the invoice, I did not talk to Brown at all. No, I talked to his helper on the first day, but the second day I went there I talked to Brown. [R. 230.]

FRANK MONTGOMERY

on

### *Direct Examination*

testified as follows:

By Mr. Norcop:

Prior to May 1st 1942, I was proprietor of the T & M Tire Service, 1620 South Broadway. I went into business therein the early part of 1942, and was in about 11 months. I don't know Mac R. Brown. I did not buy any tires from Mac R. Brown at any time. This is my wrong sales number. My sales number is not AA 17452.

My sales number is AA 89008. I did not have anybody employed by me at any time by the name of Jack Briffit.

*Cross Examination*

By Mr. Goodman:

I did have a couple of employees working for me. One is named Frank Chamblin. He was mostly doing piece-work. My partner and I operated the business. My partner's name was Elmer Turnquist. [R. 230, 231.]

*Redirect Examination*

By Mr. Norcop:

We had dissolved partnership. The business was mine three months before the first of March, '42.

*Recross Examination*

By Mr. Sullivan:

T & M Tire Company. It stands for Turnquist and Montgomery. No one else is using that firm name to my knowledge. We never handled new tires. [R. 232.]

HENRY IMMERMANN

on

*Direct Examination*

testified as follows:

By Mr. Norcop:

My business is the piano business at 246 West 87th Street, Los Angeles. In connection with my business here I have a sales tax number with the State of California. I have never had any dealing in buying new tires. I never drove a machine. [R. 233.]

JAMES B. GRAHAM

on

*Direct Examination*

testified as follows:

By Mr. Norcop:

Before I went into service my employment was General Manager of the California Provision Company, 1119 East 12th Street, in Los Angeles. I know just one of the defendants in this case — Louis Vitagliano. I have known Mr. Vitagliano about 8 or 10 years. I loaned him trucks several times. It was common practice to loan him trucks occasionally. I loaned it to Mr. Vitagliano on September 8, 1942; license No. PC-R-5363; International Truck. [R. 233, 234.]

*Cross Examination*

By Mr. Angelillo:

As to whether I know whether he borrowed the truck in question on September 29th, I wouldn't say. He serviced our equipment; had done so for some years last past. [R. 234.] I did not hesitate to loan him a truck any time he asked for it. I had seen oil on that truck. Whether the subject of oil was mentioned at the time, I don't know. I knew that he personally was insured; that is, he had insurance, no matter where he drove that truck. He had previously told me that. [R. 235.]

PAUL B. PARMELEE

on

*Direct Examination*

testified as follows:

By Mr. Norcop:

I am working at the Miles Transfer Company. In the middle of the summer of 1942, I was employed by the Bay Cities, the Humberts. I don't believe I know who the defendants are. I do not know Mr. Rose by that name. I know the man in uniform by the name of Sam Blank. On August 1, 1942, while I was working for the Humberts, I did go with one of the trucks to 501 East 5th Street, Ontario. That is where I went to. I saw Sam Blank, and I believe this gentleman here. (Indicating Mr. Vitagliano.) I also saw Mr. and Mrs. Humbert out there, and the other truck driver, Sam Dowden, and several other people that I don't seem to recognize, if they are here. We got there together. [R. 236.] There was not any conversation on the part of Mr. Vitagliano that I remember. We all pitched in and loaded these tires. The other man helped also. As to Exhibit No. 19—I believe this document is one of the documents that I had with me on that trip. [R. 237.]

*Cross Examination*

By Mr. Goodman:

I saw the invoices for the delivery of these cars that I delivered from Ontario to the place on Virgil Street. The gentleman in uniform here to your rear signed for the delivery of those cars. [R. 237.] I made only one trip, which was on August 2nd. As to Government Exhibit No. 19, I made this trip.



Now that I have refreshed my memory with Exhibit No. 19, it brings back to memory that I heard that his name was Rose, but at that day his name was Sam Blank. I saw his name on the invoice immediately after we got through with this business. [R. 238.]

*Cross Examination*

By Mr. Angelillo:

I saw Mr. Rose there. There were five of all together. There were three men there, and the other driver and myself. [R. 239.]

SAM RAPPAN

on

*Direct Examination*

testified as follows:

By Mr. Norcop:

My business is gas station and tire business at 800 North Mission. I owned the Rappan Service, at 2824 Sunset Boulevard. Prior to 1942 I sold it to the Signal Oil Company. Mr. Sam Weinstein and Mac R. Brown operated it. Off and on I had known Mac R. Brown about five years previous. I had known Mr. Weinstein about a year.

This document you are showing me is the sale of stock in bulk. The date is October 15, 1941. [R. 240.]

Between October 15, 1941, and the time I reacquired the station I did have a truck that had T & M Tire Service printed on it. I bought it. We bought the truck from a fruit man. My brother-in-law made actually the transaction. My brother-in-law's name is Adolph Hoffman.

That's the check I issued out to my brother-in-law, which he paid for, cash.

(The document referred to was marked Government's Exhibit No. 25 for identification.)

I was out of business, and I went back into business, around July, maybe a little earlier, 1942. The truck was acquired a few days later. [R. 241.] I did not take the name of T & M Tire Service off the truck. I disposed of the truck several weeks after the freezing of the tires, probably last November, or Christmas.

FRED H. DOANE

on

*Direct Examination*

testified as follows:

By Mr. Norcop:

My occupation is Sergeant of Police, Los Angeles Police Department. I recall going to the location of 613 North Virgil, in the month of October. [R. 242.]

I believe it was, in September, about the middle of September, I met Mr. Foster, and another gentleman. Later I met Mr. Rose there. I had a conversation with Mr. Rose. We drove in on the lot, and we recognized the OPA man, and recognized Mr. Rose's car on the side road. I got out of the car, and walked over to Rose's car, and told him I was a police officer; I told him that the OPA said he had that place rented, and they wanted to look in there; and he said he had no key to that building. Mr. Rose said, "Unless you are going to place me under arrest I am going to leave." At that time he started his car. I reached in through the window. He grabbed

my arm, and pushed it down, and started his car, and went toward the back, made [R. 243] a lefthand U-turn around some buildings, and as he went around the buildings, he went so close as to scrape them. We followed. I stopped the car and got out. I told Mr. Rose to get out, and he told me that he was going to kick my God damned teeth out. I told him another officer was coming from the police department who wanted to talk to him. Mr. Rose stayed there until the other officer got there. After the other officer got there I left. The other officer was Officer Hamilton.

*Cross Examination*

By Mr. Goodman:

The occasion of my going out there was I had a call from Mr. Foster. He told me over the phone that he had discovered a warehouse full of tires. I didn't go in any warehouse. I did not have a search warrant when I went out to this place where I saw Mr. Rose. [R. 244.] The warehouse was locked. I believe a little while later I said if it was a State case before we could go in there we would have to have a search warrant. I saw there were tires there. When Mr. Rose came I didn't tell him I was detaining him until he opened the door. He told me he was going to leave. I told him I was going to detain him until the other officer [R. 245] was there. I could have arrested him on suspicion, but I didn't. Mr. Foster did not tell me to detain Mr. Rose. He didn't partake in the conversation. I knew he had a bunch of tires, because I could see them through the window. I knew they were his tires, because the OPA said so. It is a fact that Mr. Rose said at that time that he wanted to call his attorney,

and wanted to have his attorney there. I told him until Mr. Hamilton got there, he couldn't do anything, although he wasn't under arrest by me. At that time I didn't know of any crime that Mr. Rose had committed when I had detained him. [R. 246.]

D. J. HAMILTON

on

*Direct Examination*

testified as follows:

By Mr. Norcop:

My business is that of police officer of the City of Los Angeles. September 19, 1942, I did on that date go to 619 North Virgil Street, Los Angeles. I saw Mr. Dundas, Mr. Foster, Mr. Earnest, the defendant Rose, and Officer Doane there. I went over and I talked to the defendant Rose, and asked him if he owned — if he had any access to that building. He told me, "No." Finally told us that he had a key to the building, but it was home and he wanted to go home and wanted to call his attorney. I said "All right. We will get in the car and go over to the station. So he got in the police car with me. I placed him under technical custody, placed the handcuffs [R. 247] on him, ordered him out of the car, and knowing that he had the keys, took the keys and opened the door and pushed him into the storeroom where the tires were and there were nine tires there. I went in and kept Mr. Rose in custody, and took Mr. Rose and the nine tires over. I made a record of the numbers of the tires.

(Thereupon the tires were rolled in and placed before the jury box.)



(At this point, the following took place: Mr. Goodman asked permission of the Court to approach the bench, which permission was granted. Thereupon, Mr. Goodman, together with Mr. Sullivan, Mr. Norcop and Mr. Angelillo approached the bench. Mr. Goodman thereupon stated that he objected to the tires being rolled into the courtroom and exhibited to the jury, and that his objection was based upon the following grounds, to wit: that they were incompetent, irrelevant and immaterial, were illegally obtained, and were being rolled before the jury's eyes for the purpose of creating prejudice and appealing to the passion and prejudice of the jury by virtue of the tremendous size of the tires and on the further ground that there was nothing unlawful in the possession of the tires by the defendant Rose, and that the tires were not connected up in any way with the other defendants, or with the commission of any overt act. (The tires that were rolled in and exhibited to the jury were very large, new truck tires.))

Mr. Shippee: I don't think those ought to be exhibited unless they have a ceiling price on them.

By the Witness: Those are the tires that I took over to the Wilshire Station and which I brought here to court myself.

(The tires were admitted in evidence.)

The Court: For the record. Don't you have a list of them?

Mr. Norcop: Yes, we have a list.

By the Witness: They are eight tires listed but nine tires here.

(The document referred to was received in evidence and marked Government's Exhibit No. 26.) [R. 249.]

*Cross Examination*

Mr. Goodman: The occasion of my going out to 613 Virgil Avenue was Mr. Foster of the OPA called and stated that there was a warehouse full of tires. My captain said to meet him at 613 North Virgil Avenue. I did not have a search warrant when I went out there. Nobody talked about a search warrant at that time that I recall. Mr. Rose was there when I arrived there. He stated he didn't have a key to start out with. I did not have any evidence on hand that Mr. Rose had or was about to commit any felony or misdemeanor. I had no evidence at that time. He was hostile, and I was taking no chances. [R. 250.]

When I got there and I saw new tires stored in this place, that is the only evidence that I had on hand which gave me suspicion or a belief that they may have been stolen tires. I placed the handcuffs on him.

As to what I mean by "technical custody"—Well, if I am going to take him in to the station and he is hostile, or anybody is, we take them into technical custody such as to book him on suspicion of burglary or any felony. He was under arrest. He wasn't booked, but he was under arrest at that time. I didn't take the key off his key ring. I took the keys. I opened the door. I didn't have a search warrant at the time. Then I went in and took the nine tires. [R. 251.]

Then after I got the tires to the station, having issued this receipt, we made an investigation to determine whether the tires were stolen. I found they were not. They

were not stolen. Mr. Rose, he called me first by telephone. I did tell him on that occasion, "You can come and get the tires. We found out they were not stolen." Then I called Mr. Dundas, the attorney for the Office of Price Administration. Substantially, I told him I was going to deliver the tires to Mr. Rose, and he told me not to deliver them and said that he wanted me to hold them until this trial is over. When Mr. Rose called for the tires, I said "I am sorry, I can't give you the tires. [R. 252.] It is a fact that all divisions all over the city had considerable difficulty with stolen tires, and that the tire dealers were having considerable trouble in keeping their tires in such places and under such lock and key that they could not be hijacked, broken into and stolen. I was working with Mr. Foster on these various tire matters for some time. And as a result of my association with that particular office there had come to my knowledge many of these cases where there had been thefts and burglaries of tires and tubes. Mr. Foster was working on it from the government's standpoint, and I was working with Foster through the Statewide burglary detail. When I came out there, I believe Mr. Rose asked the right to call his attorney and be represented by counsel. When he went into the station he could have that right. [R. 253.]

When I got there, there was those nine unwrapped tires there. Just nine of them. I had the handcuffs on Mr. Rose from the time we loaded the tires until we got into the station. The total transaction of getting Mr. Rose into the station didn't take over 45 minutes. [R. 255.]

HENRY L. DOYLE

on

*Direct Examination*

testified as follows:

By Mr. Norcop:

I am service manager for the Smiling Irishman, 921 South Hoover. In September 1942 I was there. Mr. Rose called on me. Mr. Rose came in and asked me if I wanted to buy any tires and I told him, "No." I asked him what they were. He said he had new tires. I asked him the price. He said they were \$35.00 apiece in lots of a hundred or more. I asked him what price they would be in lots of four. He said, "Thirty-seven fifty." And I asked him how I could get in touch with him and he left a card with me. This card is the one. I did not place any handwriting on the card. Mr. Rose did—in my presence.

(The document referred to was received in evidence and marked Government's Exhibit No. 27.)

I did not have any transactions with Mr. Rose as a result of that conversation. [R. 256.] I had a retail sales tax permit. The firm had it about six years. We did not sell tires of any kind. [R. 257.]

DONALD D. HARWOOD

on

*Direct Examination*

testified as follows:

By Mr. Norcop:

I am employed with the Office of Price Administration as attorney. I have been since the 14th of September, 1942. The first time I recall seeing Mr. Rose was on a Saturday morning at approximately 11:00 o'clock, on



North Virgil Street, 613, in Los Angeles. Mr. John Foster was there. I had no conversation with him. I overheard a conversation. The conversation was that [R. 257] Mr. Rose after Mr. Foster stated hello, or made some greeting, that he, Mr. Rose, in driving down Virgil Street had seen Mr. Foster, and drove in the lot to say hello. Foster asked Rose what he was doing. He said he was fooling around; and Rose asked Foster what he was doing, and he, likewise, said he was just fooling around. Mr. Rose, while sitting in his automobile, stated to Foster, "Why don't you get wise to yourself and quit fooling around with this OPA," or Government stuff, and Mr. Foster said, "Well, that was his business," and Mr. Foster said, "Well, if you don't watch out, you might get hurt." Mr. Rose stated—did I say Foster? Mr. Rose stated, "If you don't watch out you might get hurt." That is all the conversation I can recall.

Mr. Goodman: I move to strike out the answer on the ground that it is incompetent, irrelevant and immaterial, and does not prove or disprove any issue in the case, and is only brought here to inflame the minds of the jurors, your Honor.

The Court: Motion denied.

I met Mr. Mac R. Brown on or about the 15th day of September, at a service station on Sunset Boulevard. Mr. John Foster was with me. Mr. Foster and Mr. Brown had a conversation in my presence. There might have been a party in the service station, but there was no one within hearing. We drove into the service station. [R. 258.] Mr. Foster asked Mr. Brown if he had the invoice, and he produced an instrument in writing, and handed it to Mr. Foster. Mr. Foster asked Mr. Brown where the

tires were. He said he did not know. He had sold them. Mr. Foster stated, "You will have to get the tires back." Mr. Brown stated, "I don't think I can get the tires back. I will try to get them back, but I don't know what I can do about it, or how." Exhibit No. 23 is the instrument in writing which was handed to Mr. Foster by Mr. Brown.

I first met Weinstein either on the same day that I had met Mr. Brown, or the following day, at a service station on Riverside Drive. Mr. John Foster was with me. [R. 259.]

NORMAN IRWIN

on

*Direct Examination,*

testified as follows:

By Mr. Norcop:

I am an auditor employed by the Eagle Oil Company. I have been with the Eagle Oil Company since September, 1940. I know of my own knowledge any of the subsidiary concerns controlled by the Eagle Oil Company. There is one; The Golden Lubricants, Incorporated; has had a station at San Fernando and Winchester streets in Glendale. [R. 260.] Golden Lubricants had a California sales tax license number and had about 45 stations all together. The station at San Fernando and Winchester Road in Glendale had a specific number. I know definitely the station did not carry on business at that location after April 6, 1942. No one by the name of Joe Munn was ever employed by my company.

*Cross-Examination*

By Mr. Goodman:

Our various service stations each had a number. No. 28 was given to the station on San Fernando. We had a station at 2800 San Fernando Road, and we still have it. I have a permanent record in which the names of all employees are listed. I have not brought that record with me. [R. 261.] My company did sell new tires and tubes up to the time of the freeze; and thereafter, subject to the rules and regulations and directives of the Office of Price Administration. We kept a stock of new tires on hand at some of our stations. As to what information I base my statement on that it closed exactly on that date. [R. 262.] My opinion is based upon inter office communications and not upon a physical examination of the premises, of the physical closing of the station.

The manager in charge of that station on and before April 6, 1942, I believe his name was Lou Zweighoft. I never saw him. There were other persons employed there, but I can't say who. The direct hiring was done by the station manager and approved by our field man. The master number of Golden Lubricants, Inc., that is, their seller's resale number was AGX 6285-8. [R. 263.]

HERMAN STEINBERG,

on

*Direct Examination*

testified as follows:

By Mr. Norcop:

I operate a service station and tire place at 901 East 9th Street. I have carried some stock of new tires. I

know a Mr. Sam Weinstein. I know Mr. Phil Taplin here. Both of these men came to see me at my station in the past year. I had a conversation with them. [R. 264.] The big stock of tires that I had, new ones, they asked me whether I wanted to sell them, and I told them that I didn't care to. I did not sell them any tires.

RAY H. PADDOCK

on

*Direct Examination*

testified as follows:

By Mr. Norcop:

Prior to three weeks ago, I was a tire jobber. I was in that business here for 13 years. Among the persons seated at the table—the only man that I remember meeting is Mr. Rose—yes; Mr. Brown, too. I called on Mr. Rose about a year ago at a Shell station. I left my card [R. 265] and he called on me at my office a week or ten days later. I had a list of tires that was available in the California Warehouse that was just down the street. I told him that. We went down to the warehouse and thoroughly examined them. I would say there were approximately 60 or 70 tires there. They were all new, in wrappers. They were the property of Guy Bryan. I left where the tires were and went just down the street to Guy Bryan's there. Mr. Rose went with me. I left he and Bryan to go ahead and make any deal they wanted to. [R. 266.]

*Cross-Examination*

By Mr. Goodman:

I was never employed by Mr. Guy Bryan. Mr. Bryan at one time was a carload buyer of tires from me. Mr.



Rose did not buy the tires. I knew that Mr. Rose was a retailer, licensed to purchase those tires. Nothing wrong about the attempted transaction that I knew of.

*Cross-Examination*

By Mr. Sullivan:

Mr. Brown did not have anything at all to do with this transaction with me personally, only Mr. Rose intimated that Mr. Brown would have to approve it. Mr. Rose took Mr. Brown with him to consummate the deal. I did not have any conversation with Mr. Brown.

NATHAN LEVY

on

*Direct Examination*

testified as follows:

By Mr. Norcop:

My business is Service Station Operator in Los Angeles. I know Mr. Vitagliano, Mr. Lieb, and I know Mr. Weinstein slightly. In that connection I saw Mr. Vitagliano in March, 1942, at my service station at 8th and Wall streets. Besides Mr. Vitagliano and I, there was a man there. [R. 268.] He did not come with Mr. Vitagliano. He was driving another car. I had a conversation there at that time with Mr. Vitagliano. I was authorized to sell tires; I was a dealer in new and used tires. On another occasion Mr. Vitagliano discussed tires with me. He told me he had some tires and if I was interested. I told him, "No; I was more or less through." And he asked me if I knew anybody else who was interested in tires and I told him I did not.

*Cross-Examination*

By Mr. Goodman:

I was still in business at the time that Mr. Louis Vitagliano offered to sell me some tires on the last occasion. I still had my retail sales permit. [R. 269.]

NORMAN IRWIN

recalled.

Further

*Direct Examination*

By Mr. Norcop:

I have brought a list of the 45 service stations of the Golden Lubricants, together with the California sales tax permit numbers. This is it. The number I see here that I saw here this morning is AGX-6285-8. I find that number on the original invoice there, the white one of Exhibit 28. My sheet shows that that station was located at San Fernando and Winchester. My information that I brought is merely verification that it was closed on April the 6th, 1942.

*Cross-Examination*

By Mr. Goodman [R. 270]:

The original inventories were purchased by Golden Lubricants from our tire store on 3300 Sunset boulevard.

As to whether when we made purchases of new tires and tubes through that central location we used or gave any other sales tax number other than "AGX-6285-8"—That would depend on which station was buying the tires. This list I have here does have the number AGX-6285-1. The only difference between that number and the one he gave me is the last number. That was put on

by the State. We did have the number AGX-6285-8. During the time this station was in operation, No. 28, the number that I have here on my list is the same as I have on this item AGX-6285-8; which corresponds to the number on Government's Exhibit No. 28, AGX-6285-8. I did not bring a list of the various employees.

WILLIAM J. DAVIS

on

*Direct Examination,*

testified as follows:

By Mr. Norcop:

Mr. Norcop: If there isn't any objection, I would like to have the list the witness referred to marked for identification.

(The document referred to was marked Government's Exhibit No. 29 for identification.)

My occupation is Service Station Operator. In May, 1942, I was engaged in that work. I was then working at 500 South Atlantic, employed by Urich. I made a sale of the merchandise that is listed on this piece of paper.

(The document referred to was marked Government's Exhibit No. 30 for identification.)

Two men [R. 272] came in and wanted to buy some tires. They came there in a vehicle. I have two license numbers there. I delivered the tires at the same time the men came there. They were paid for. The amount of money that is shown on the invoice was what I received. There was no conversation—just mostly about the price; how much I wanted for them. [R. 273.] There is a retail sales tax number on the ticket—No. A 24695.

That was placed on there at the time the transaction was being consummated.

*Cross-Examination*

By Mr. Goodman:

I held a board of equalization seller's permit at the time of this alleged transaction. I did not receive any instructions from the Office of Price Administration, or any representative thereof, telling me [R. 274] how to make a sale of that kind. I was positively of the opinion that I was making a lawful sale under the rules, regulations and directives of the Office of Price Administration. They represented themselves as dealers. They told me where this station was located. The address is on the slip. When I made the sale I took the pains to insert on the invoice that these tires and tubes were being purchased for the purpose of resale, and I so indicated that on the invoice.

I never had any business with Mr. Benjamin Rose, nor Mr. Joseph Lieb, nor Mr. Mac R. Brown, nor Mr. Phil Taplin. In reference to the other two gentlemen: they are similar to the guys, maybe the same, I am not positive. [R. 275.]

LEO ISENHOWER,

on

*Direct Examination*

testified as follows:

By Mr. Norcop:

I am an employee of the California Overall Cleaning Company. I run a laundry route. In my work I use a Chevrolet sedan laundry truck. As to the persons sitting to your left in the court room—I know only Mr. Rose.



I saw him several times. I am not personally acquainted with him. I saw him sometime in 1942. I first saw Mr. Rose at a service station immediately north of the J. L. Schlosser Company, on Western Avenue. The name of the customer there was Fenton, and another man named Willie. [R. 276.] It is a small office, and the customer came to pay his bill, and Mr. Rose, I believe, was standing in that office there one time. I needed inner tubes for my trucks. I talked to him about it. The sum and substance of the conversation was that he had some inner tubes for sale. He said he could sell them to me, and I said I would like to get them, so I made an agreement to buy them from him. There was a statement as to price of around \$4.00 apiece. I got them at another place. It was near 9th and La Brea, on a vacant lot, next to a large building. He brought along the inner tubes I had agreed to buy from him, and I bought them from him. I think there were six boxes of them. I [R. 277] think there were six in a box. That would be 36 inner tubes. I paid him. I generally have cash in my pocket, and I paid him—it seems to me like I gave him mostly cash. I think there might have been one or two checks. They were not my own checks. I was not a retail tire dealer at that time.

*Cross-Examination*

By Mr. Goodman:

I don't think I was introduced to Mr. Rose at the gasoline station. I didn't know Mr. Rose prior to that time. I had not actually formally met him. I just saw him. [R. 278.] I have not related all the conversation on direct examination that took place between Mr. Rose and I before Mr. Rose agreed to sell me the inner tubes.

As to whether I recall telling him that I wanted to buy the tubes for the purpose of resale and that I had a retail sales permit—I don't think it was mentioned. I don't recall saying anything in that reference either yes or no.

As to whether I tried to give Mr. Rose the impression that I was a dealer—I don't think I tried [R. 279] to imply any impression, other than that I wanted some inner tubes. I don't think I told him that I would subsequently give him the number of my retail sales tax permit. I told him I had several trucks. I probably said that, all right, because I did.

As to whether I told Mr. Rose also that I had a lot of business with gasoline service stations and that I was buying tubes for that purpose—I don't recall anything along that line of conversation. As to why I bought 36 inner tubes when I had only two trucks—the two trucks using inner tubes, in my experience, that the inner tube is only good for about six months and it will take ten tubes to give an extra set for each one. I was for laying in stock. I didn't want to get put out of business. [R. 280.] Mr. Foster and Mr. Norcop talked to me before I came here in reference to that subpoena. Mr. Foster contacted me before this trial. That was a week ago Monday. I had seen Mr. Foster several times, but not definitely regarding this trial. I have known him for about six months. I met Mr. Foster approximately a month after this transaction with Mr. Rose took place. I met him in Santa Monica. I just happened to run into him. It was at the police department in Santa Monica. I was under suspicion of having stolen property. Mr. Foster asked me to come down and talk to him about [R. 281] it. It is not a matter that refers to this case

in particular. It is a separate transaction. Mr. Foster started to talk about these tubes first. I didn't have them any more and I was trying to get them back again. He asked me where I got the tubes. I can't tell you the exact conversation, but the gist of it was that I did get the tubes from Mr. Rose. I had been informed that I had violated the rules and regulations of the Office of Price Administration in that respect before that time. I have been informed of it pretty regular. I haven't been threatened or told that I would have to testify against Mr. Rose. I was subpoenaed down, but I am not testifying against Mr. Rose or for Mr. Rose. I didn't intentionally do it, but so far as I know, I am being charged with that violation. They have placed something against me. I was in court a week ago Monday, and I am to appear [R. 282] in court again the following Monday. My matter is not yet determined.

Q. By Mr. Goodman: Did you dispose of any of those 36 tubes by sale?

A. I refuse to answer the question, unless I have to.

Mr. Goodman: He has waived his immunity.

Mr. Norcop: If the court please that is not part of the examination of anything that was asked him before on direct and he did not ask to make him his own witness.

Mr. Goodman: That is the entire transaction.

The Court: Just a moment. I am going to sustain the objection. Just remember, gentlemen, that this man is not on trial. The defendants that are named in the indictment are the defendants in this case, so this witness is not on trial.



Mr. Goodman: I want to take an exception, and I also want to make an offer of proof, your Honor.

The Court: You will have to make your offer of proof in the absence of the jury, and make it in the record and exception will be noted. You can make it during the recess.

As to the other defendants in this case—I have looked the gentlemen over here around the table you are sitting at. I have never [R. 283] seen any of them before.

DAVID M. HOFFMAN

on

*Direct Examination,*

testified as follows:

By Mr. Norcop:

I am an enforcement attorney employed by the Office of Price Administration. I have been with the Office of Price Administration since the 26th of May of 1942. I met Mr. Rose at the Office of Price Administration, 1033 South Broadway, about the latter part of June. This stenographer made notes of the happenings upon my request. I talked with Mr. Rose upon that occasion. [R. 284.]

Mr. Rose came into the office with Mr. Foster and Mr. Storms. We went into one of the offices and sat down and I proceeded. Mr. Storms informed me that Mr. Storms had been down to Mr. Rose's service station located, I believe, on the corner of Olympic and Hill, and had had a conversation with Mr. Rose in which Mr. Rose had offered to sell Mr. Storms four new tires for, I believe, a price of \$175.00, and had offered also to sell Mr. Storms some retreaded tires for, I believe, \$16.00



or \$17.00 each. The witness said that he then asked Mr. Rose certain questions concerning what Storms had said to each of which Rose replied "I refuse to answer." [R. 285.]

I asked him if he sold used tires. He said, "Yes, we sell used tires." I said, "Where do you sell used tires?" He said, "My brother runs the parking lot on 6th Street." I said, "Is that the Capital Auto Parks that I asked you about before?" He said, "Yes." I said, "Does your brother run that place?" He said, "Yes; but I have the license." I said, "You also have the license for the Shell Auto Park"—I believe that was the name of it—"on the corner of Olympic and Hill?" He said, "Yes." I said, "Now, did you offer to sell Inspector Storms some new tires for \$175, as he states?" He said, "I never saw Inspector Storms before in my life." I said, "You know Inspector Foster, this gentleman here?" He said, "I never saw Inspector Foster before in my life." I said, "Mr. Storms, will you repeat again what you told me again about the transaction of purchasing or being offered some tires?" At which time, as I recall, Mr. Storms again went through and repeated what he said before. [R. 286.]

I said, "Did he ask you or did you offer to state that you had any rationing certificate?" Mr. Storms said, "No." I then said to Mr. Rose, again, "Mr. Rose, did you offer to sell these new tires or retreaded tires to Mr. Storms?" He said, "never saw Mr. Storms before in my life." I asked him if he sold tires without rationing certificates, and he said, "You can't sell tires without rationing certificates." I said, "Did you sell tires without rationing certificates?" He said, "I refuse to answer."

From that point on Mr. Rose stated that he would refuse to answer any further questions. At the conclusion, I said, "Would you like to have counsel?" He said, "Yes." I said, "Very well; you can have counsel. Would you like to come back with your counsel on this matter?" He said, "I don't think I have to come back at all." I said, "Very well." At which time we concluded our conversation. [R. 287.]

*Cross-Examination*

By Mr. Goodman:

I am an attorney-at-law. While I was in this office I had sitting next to me Mr. Foster, an investigator of the Office of Price Administration. I also had a stenographer from the Office of Price Administration. There were also there from the Office of Price Administration myself and Mr. Storms. I did not bring Mr. Rose. I did not request him to come at all. He came in with Mr. Foster and Mr. Storms. He came in with Mr. Foster.

I believe that there was a statement to the effect that Mr. Foster had asked him to come down to the office. [R. 288.]

The purpose of that interview was to find out what Mr. Rose and Mr. Storms had to say about this matter. I didn't know. As to whether if Mr. Rose had said, "Yes; I have sold these tires," I would have brought criminal proceedings; whether that was the purpose of it—Not not necessarily.

The purpose of those hearings are to interview parties to find out what they have got to say about a transaction, not to obtain admissions. If, incidental to the

interview it happens to be that the man admits that, that is one of the things that takes place; yes.

I did not tell him at the commencement of the conference that any statements he might make in that office there would not be used against him and that I would give him immunity. I did not tell him that he had a right to have a lawyer until the conclusion of the conference. I didn't tell him that because I didn't know that there was anything involved in the matter until after Mr. Storms had recited the story. I did not tell him that he was entitled to a lawyer until the conclusion of the conference, after I had interrogated him on all [R. 289] these various questions and he refused to answer them.

When I found out as to Mr. Rose's position, I told him that he was entitled to a lawyer if he wanted. I have been a prosecutor for many years. As to why, when I found no violations—I wanted him to tell me what he had to say. I wanted to find out what his position was and what he had to say about the matter, not to find out if he was guilty or innocent, but to find out what he had to say.

Mr. Storms had told me, in the presence of Mr. Rose that Mr. Rose had offered to sell him tires, new tires, without certificates. That is a violation of the rationing law. [R. 290.] Mr. Storms was an OPA representative. He was not sent out by the Office of Price Administration to induce Mr. Rose to make a sale to him. He was sent out to investigate a complaint that had been received that Mr. Rose was selling tires, without certificates, for prices over the ceiling. As to whether at the conclusion of that conference I transcribed those notes and gave Mr. Rose a copy—I can't recall whether he was given a copy. [R. 291.]



(In Judge's chambers. Present: The Court; and Messrs. Norcop, Sullivan and Goodman.)

Mr. Goodman: My offer of proof is to prove by the witness Eisenhower that after he brought these tubes, he sold them to divers persons at a profit.

JOHN FOSTER

recalled.

By Mr. Norcop:

Referring to the 23rd or 24th of June, 1942, I was present on the occasion that Mr. Hoffman mentioned. There was present Investigator Storms, and the young lady who was taking down the dictation, and Mr. Rose, Mr. Hoffman and myself.

Before Mr. Hoffman met him—I had a brief conversation with Mr. Rose. I merely went in, with Mr. Storms, in to Mr. Rose's place of business, at Olympic and Hill, and asked Mr. Rose if he would get in the car and go over to the Office of Price Administration with us, which he did. Nothing took place before Mr. Hoffman met Mr. Rose, or until we went into the office, and [R. 292] asked Mr. Hoffman if he would come into the office with us. We discussed the situation with Mr. Hoffman, and gave him the details of what had previously happened. That was in Mr. Rose's presence. We told Mr. Hoffman that Mr. Storms had contacted Mr. Rose; Mr. Rose had made an offer to sell him some tires, and that I was standing across the street at the time, and that Mr. Rose was going to go in Mr. Storms' car with him to pick up these tires, and that Mr. Rose's father had seen me, and run over and whistled to Ben, called him back, and they backed up the car, and Mr. Rose looked



and saw me, and went back over, and talked to Mr. Storms, and Mr. Storms drove out, and came to me, and told me they had refused to sell him. Mr. Hoffman did the examining, to the best of my recollection; asked most of the questions. After this statement had been taken from Mr. Rose, Mr. Rose told me that he would like to speak to me alone. I followed him [R. 293] outside. We went out in the highway where we stood. Mr. Rose asked me if I remembered seeing him any place, and I told him I didn't believe I did. He said "I know you. I have seen you up at Louis Vitagliano's, on his lot." I said, "What were you doing up there?" He said, "What do you think?" I asked Ben at that time to tell me, I said, "Why don't you come across and tell me what you know about this deal? It is going to make it a lot easier if you tell us all you know about these things, and let us get it over with." He said, "I don't think I can, as long as there is anyone writing down what I say." I next met him two or three weeks after that date at his service station at 955 South Hill street. I had a conversation with him. No one else was present. I asked him if he knew anything about another tire movement and he said he possibly did, but he didn't care to discuss it. He said, "Jack," he said, "You are on the wrong side of this thing. Why don't you get wise to yourself, and get in on the right side? [R. 294.] There is some money to be made." So I told him I wasn't interested. He said, "Well, I know where there can be a few thousand dollars picked up if you just lay off. I know one thousand you would get right away, and I know several others that you can get, and I would be glad to take care of it for you." I told him I wasn't interested in that at all. About that time some fellow went by

and he asked me if I saw Shorty go by, and I said yes. He said, "You had better get out of here." I said "Why?" He said, "Those fellows don't like to see you in here. They are liable to come back. I have gotten in trouble with them already, because they have seen me with you. If they see you in here a lot, they might think I am telling you a lot of things I shouldn't." Shorty is Shorty Herman Hoffman. Nobody concerned with this case. I saw Ben in Mr. Dundas' office. Mr. Earnest was present. That was about the middle of July at 1037 South Broadway, in the Office of Price Administrator. Rose said he knew he was in trouble, and he had been thinking it over, and he was just wondering how he could get out. He said, "I am willing to spend [R. 295] \$500, or whatever it is, to get out of this, and get clean and straight again." Mr. Dundas or myself said we did not know how deep he was involved at that time, and we would like to have him tell us just how deep he was involved; what he had done. He said, "Some of these boys I have been dealing with came around, and put a gun, laid a gun on the counter here, and said to me: "You see this? You wouldn't want to be found lying around the road some place, would you?" They asked him, "Do you know what that is?" He said, "Yes, it's a gun." And they said, "You wouldn't want it used, or anything, would you?" He said no. They said, "Just remember: you don't know anything when somebody comes around to ask you—" We told him we did not know just how deep he was in the thing, and if he wouldn't tell us we would have to continue with our investigation. I next saw Mr. Rose at his service station at 955 South Hill. [R. 296.] I believe it was in the latter part of July. We were alone. I asked Mr. Rose

if he had purchased some tires from Mr. Kreling. He told me he had. He said he had them over in his garage. He said that would be O.K. for me to see the tires and check them, so I made an appointment with him. He did not keep the appointment. The next time I saw him was about August 10th or 12th in the parking lot that he ran in the first block south of his service station on Hill Street. I asked him what he had done with these tires. He told me he had them; he wouldn't let me see them until the first of the next month. I told him I couldn't wait that long. He said, "Well, if that's the case, why, you had better not do any more talking with me. I guess you had better see my attorney." I said, "Does he have invoices, or anything showing what happened to the tires?" He said, "No, he doesn't but he should [R. 297] have, by the time you talk with him." He told me the name of his counsel. He gave me Mr. Benjamin Goodman's name and address. The next time I saw Mr. Rose was, I believe, September 19, 1942, at 613 North Virgil avenue, Los Angeles. I was walking north on Virgil, right in front of 611. Mr. Rose pulled up just as I crossed over the sidewalk. I was probably 30 or 40 feet from there. He saw me, and he just kept on going. We passed the time of day there on that occasion. Again he made the statement to me that he thought I was on the wrong side of this, and asked me if I was still [R. 298] fooling around with the OPA. I said I was. He said, "Well, you are still on the wrong side. I think you are dealing with some pretty tough boys. You are liable to get hurt." I told him I would take that chance. He said so long, and started his car, and left. Then I went to the rear of this particular building we were standing on the side of. I saw the windows were all covered over with



cardboard, and I couldn't see in it. There was a little glass broken in the back of this, and there was a piece of *tarpulin* hanging over it. I tore a hole in the tarpaulin, and looked in there. This place was, I would say, about a quarter filled with new tires and new tubes, and I then called our office, and got hold of Mr. Dundas, and advised him of that. Later I saw Mr. Rose again, same afternoon, at the same spot. Mr. Dundas and Mr. Earnest were there. Officer Doane left at the same time that I came on the scene. Mr. Hamilton asked Mr. Rose if that was his tires in his place, and Mr. Rose stated that they were not. He asked him who they belonged to. He said he had sold them. He asked him to whom he had sold them. He said that there were invoices to show that. He asked him if he had a key to the place. He said he did not. He asked him who had the key. He said the man he sold the tires to. He asked him if he rented this place. He said he did not [R. 299]; he did not know anything about it. Officer Hamilton asked him if he had a duplicate key. He said he might have one at home. He said "Well, let's go over there and see." So we started out, and Mr. Hamilton stopped and went over and talked to Mr. Dundas and Mr. Earnest. He came back, and put the handcuffs on Mr. Rose, reached in his pocket, and there was a chain hanging out of his pocket, and he pulled the chain out of his pocket, and said, "I want to see if these keys fit the door." He went back, and the first key he tried opened the door. He shoved Mr. Rose in. He said, "I thought you did not have a key." Rose did not say anything. We told Rose that we wanted to inventory the tires, and we proceeded to do so. There were exactly nine tires totally unwrapped. They had quite a few burglaries around stations in that neighbor-



hood, and he advised Mr. Rose that he [R. 300] would take those in, and run those, to see if they had been, stolen or reported as stolen.

I believe at that time Officer Hamilton and Benjamin Rose left, and I called a commercial photographer, who has testified here, and had him come over and take pictures of the interior of the building. We counted the tires. I have a list of those. I believe there were 67, other than the 9, and if I recall correctly, there were 431 new tubes. We then proceeded to the Wilshire police station, and we got over there and we met Benjamin Rose coming out. [R. 301.] I believe the next time I saw Ben to talk to him was at his other warehouse on Sunset Boulevard. No one else was present. That was on October 13th about 9:00 to 9:30 A. M. I saw Ben go into this driveway where the tires were. I waited for some time and then walked in. As I walked in, the rear had been filled with tires, and he had shoved some tubes in the side. He was covering them over with a blanket before letting the back of the car back down. I said, "Hello, Ben." He turned around, and he made the statement he said, "Can't I do anything without you being on my trail?" [R. 302.]

The door was open to this warehouse. I looked in, and I believe I counted 8 tires of a large size, and close to 100 or over, new tubes. In the center of the room were numerous wrappings of tires, and a large number of empty boxes. I told him I knew how many he put in there. He said, "You know where these came from, don't you?"

He said, "Those are part of the tires I had in the Virgil Street warehouse. I split them up over there, and

brought half over here.” I said I knew that wasn’t so. [R. 303.] I did call his attention to his tracks being there, and even pointed at them while he was there. I don’t believe he replied to that. I think he just laughed, and got into his car, and left. Only he locked up the door of his warehouse. I saw Mr. Rose on the next occasion, when he came into the office. That was after the indictment was filed. I first met Mr. Vitagliano, I believe on May 26th, 1942, at 12th and Stanford Place, Los Angeles, on the East Side. Mr. William Fitzner was with me.

We went to this premise and went on back to a steel covered shed where two vans were, and were looking around the vans, and Mr. Vitagliano came back and asked us what we wanted. We introduced ourselves as investigators from the Office of Price Administration. He asked us what we still wanted, that he did not see any connection. We told him we wanted to know where the tires had come from. He informed us that he had already straightened that out with the police officers. We told him we would have [R. 304] to know also. He said, “Well, the tires don’t belong to me, so there isn’t must information I can give you.” He said the police had broken his locks off. He stated that the tires belonged to a friend of his by the name of Mr. Phil Taplin, and that Mr. Taplin had the invoices to show for it. And we asked him to get hold of Mr. Taplin for us. He said he would. So he went in and called for Mr. Taplin, and we had some other conversation with Vitagliano regarding what part he had played with the tires. He said he had no part whatsoever; that he was a friend of Mr. Taplin, and he was merely doing him a favor by letting him put trucks there, leave trucks there until he could find

some storage space for them. The same day we came back and saw Mr. Taplin. At that time we looked at the invoices.

I believe Mr. Vitagliano got the invoices, either he or Mr. Taplin. We scrutinized the invoices, and saw that they had come from the Perfect Made Tire Company, and asked Mr. Taplin what he intended to do with the tires. He said he [R. 305] would hold them until after the war, and he figures there would be quite an increase and demand for rubber tires.

We asked him why he did not get them in a bonded storage house. He said he would, if he could find one. Fitzer suggested Bekin's at Alameda, near Fourth. We proceeded toward the Bekin's warehouse, and pulled up. We saw the trucks there, and saw Mr. Taplin and Mr. Vitagliano coming out of the office of the Bekin's Storage Company, down the street; they talked for a few minutes, and then got in the automobile and left. I went in to Bekin's Warehouse. We stayed there all the rest of the day. Around 5:00 o'clock they drove up. "They" are Mr. Vitagliano and two men. The two men jumped in these vans. One of the vans turned around, and started away. We waited until the second one did. [R. 306.]

We followed one of the vans up to 92nd and Crocker, where he went in to the Market Garage there, and they came out and left.

We called the police department, and the police department and myself split up the time. I left there on Thursday around 1:30 or 2:00 o'clock, and a man came over and relieved me. Shortly after that, probably at 3:30 or 4:00, we got a phone call from this man. Mr. Fitzer and myself got in my car, and drove to Wabash



and City Terrace. We sat there for an hour and a half or two hours. [R. 307.] They pulled one van out while we were there, and drove the other one in. They drove the other one past it; drove the other, and backed into the place. Mr. Fitzer and I walked in. Mr. Vitagliano, Mr. Taplin, and Mr. Weinstein were in there. They had just finished unloading these tires, and were stacking them up in this storeroom. They said "Well, it's a cinch we won't lose these tires. We are getting plenty of protection," and asked us why we didn't come a little earlier, so that we could help them unload. We told them all we wanted to know was where the tires were going.

Mr. Vitagliano followed me out, and said to me, "I hope you don't worry about these tires, because Mr. Taplin is a fine boy. He won't do anything wrong. [R. 308.] Don't worry about them, because they are in safe hands." Subsequently we did ask Mr. Taplin to come to the Office of Price Administration.

I saw Mr. Vitagliano in July at his service station on Twelfth and Stanford. Mr. Earnest was with me. His employees were around the service station, but they weren't in hearing of us. We asked Mr. Vitagliano if he knew Mr. P. R. Brown, and he stated he did not. We asked him if he had bought any United States batteries, and he stated he had. We asked him where he bought those. He said from some fellow over on Temple Street. We asked him if he knew that was P. R. Brown. He said he did not know, but it was at 1019 West Temple. We asked him if he had gone with Mr. Ulrich over there. He stated he believed he had been introduced by Mr. Ulrich to this gentleman, but did not recall exactly what his name was. [R. 309.]



Exhibit 30 for identification. I saw Exhibit 30 a few days before I went into Mr. Vitagliano's place of business. Referring to the symbols or numbers at the top of Exhibit No. 30 for identification. I found it was registered to Mr. Louis Vitagliano's sister. It was a pick-up truck that was being used by Mr. Vitagliano, which was always on his lot. Car No. TOZ143 was a Ford coupe. It had belonged to Mr. Louis Vitagliano. He had sold it to Mr. George E. Wolfe, who was one of the employees of his. [R. 310.]

Mr. Norcop: We now offer this exhibit in evidence, if Your Honor please.

Mr. Angelillo: If Your Honor please, we object to it, particularly for the reason that most of it is hearsay, and further, the testimony of the witness does not correspond with the testimony of the witness who produced it in court this morning, or who identified it. The word "International" is written on it, indicating International truck. He testified apparently, from some investigation, which we do not know anything about, and the records of the Motor Vehicle Department would be the best evidence concerning the Chevrolet truck. Obviously, the Chevrolet and the International are not one and the same person, and there is no identification or connection shown so far that the defendant Vitagliano is connected with this Exhibit No. 29. [R. 311.]

The Court: I think it is admissible. The weight will be a question with the jury. I will admit it.

(The document referred to was received in evidence and marked Government's Exhibit No. 30.)

A few days later we talked to Mr. Vitagliano at his service station at Twelfth and Stanford. We had a few

words. Viatagliano told us he had a letter from Mr. D'Orr stating he could sell tires. He showed it to us. Mr. D'Orr had answered his letter and said that he could sell tires if they were used tires. He said he hadn't sold any more tires. I was in [R. 312] there again. I was by myself. Mr. Vitagliano was there. It was just prior to the indictment. I told Mr. Vitagliano we had quite a bit of evidence that he was selling some tires to some squeegee place; and to the Gloege Coffee Company, and to some of the employees down at Bullock's or the Broadway, and he stated he had not since the freeze. He says, "Well, I will tell you; I have been implicated in a couple of loads of tires, but this you are not going to be able to implicate me in." So he laughed, kind of.

I met Mr. Taplin on May 26th. [R. 313.] I saw Mr. Taplin at his place of business, 4441 Malabar Street. Mr. Earnest was present. I asked him if he had found out anything about the tires and he told me that he believed that he had been shorted those tires; that they couldn't have gotten off unless the police stole them. I believe it is October 5th that I saw him, and at his place of business again. Mr. Earnest was with me. I asked him for the invoices that I had talked to him on the telephone about. He had them ready for me and handed them to me, I looked them over. He had one invoice showing the sale, and three or four sheets showing the makes of the tires and all where he had sold these tires to Sammy Rappan, or Rappan Service, rather, signed by Mac R. Brown. On that occasion I asked Mr. Taplin how he come to sell the tires if Mr. Vitagliano and Mr. Weinstein had sold them also, and he said they didn't own them, any part of them. I said, "I thought you told me that [R. 314] in the presence of Mr. Dundas and Mr. Earnest, that these tires were only a third yours." And he said, "Oh, I paid them

off a long time ago. They belong to me." I asked him if Mr. Ben Rose had anything to do with those at all. He said, "Let them speak for themselves." He said, "I sold them to Mac. R. Brown and that is his signature." I said, "Well, how did he pay you?" He says, "Cash." I said, "What did you do with the money?" And he said, "What do you usually do with money? I put it in the bank." And with that I got back in the car and we drove away."

I first met Sam Weinstein around May the 29th, and it was at 3200 City Terrace: I had no conversation with him at that time. I saw Mr. Brown in a Signal Oil Service Station. I showed him a card [R. 315] with Mr. Weinstein's name in one corner and Mr. Mac R. Brown's on the other, and he said, "Well, I know him, but I am not proud of it." I said, "What is the matter?" He said, "Well, we don't speak." He said, "We don't get along." And he says, "I don't have anything to do with him." I said, "When is the last time you ever saw Mr. Weinstein?" And he said, "Oh, it has been months."

Then I went down the street and watched the service station. He got on the telephone and called several times. He jumped in a red Pontiac car and started out. I followed him. He went over to Mr. Weinstein's service station. Mr. Weinstein got in the car and they sped away. I saw Mr. Weinstein about either the next day or two days thereafter at his service station. There were quite a few men there. I asked him if he knew Mr. Mac R. Brown. [R. 316.] I asked him if he knew where he was. He said, "No"; he didn't know much about him; that they didn't get along very well. I don't believe I ever talked to Mr. Weinstein regarding the case after that.

On this first occasion that I met Mr. Rose I did not have arrangements with Mr. Storms that he was going in



to the station of Mr. Rose and endeavor to buy some tires. Mr. Storms had talked to Mr. Rose on the telephone that morning. The arrangements I knew nothing about before that. I don't know how Mr. Rose had met Mr. Storms before that telephone conversation. Only what Mr. Storms told me. [R. 317.] I went to see if the sale was going to be made, but about the arrest I don't know about that. When I went out there I stood over right across the street on the corner. I had previously discussed with Mr. Storms how the two of us were going to work this particular matter; I was going to stand outside and Mr. Storms was going to go in there, so that I could observe the sale and be a witness to it. Mr. Storms went in there and no sale was made. I waited. I was walking down the street and Mr. Storms came down and met me. We went back to Mr. Rose's station, the two of us. That is the first time I met Mr. Rose. This first time I went out there to get him on a sale and didn't get him. [R. 318.] I did not ask him to become an informer. I had not prior to that date parked my car in his station. As to parking it by paying him for parking—in his service station, I never parked there. I did not ask him to find a customer to buy my car. I would have taken around \$1250.00. I told Mr. Rose that I was going to sell my car; and he said, "I will make a deal with you." And I told him that I was not interested. And he called me up—in fact, a couple of times—and told me that he had around a \$700 deal or something, and I still told him that I was not interested. I did not tell him I wanted \$1200. I didn't give him any price. At the time that Mr. Storms and I went out to Mr. Rose's station [R. 319] he had not purchased any tires at that time.

As to whether I knew that he had bought tires legitimately, as a retailer—



He didn't break it down, whether it was legitimate or illegitimately. He used the phrase "mixed up." He used the names of some persons with whom he was mixed up. He used Les Carson, Louis Vitagliano and Leo the Lion. [R. 320.] The third occasion is when I saw Mr. Rose at Mr. Dundas' office in the middle of July, 1942, to the best of my recollection. Up to that time I don't believe I had received any knowledge that Mr. Rose had bought any new tires from any retailer who was liquidating, other than from the lips of Mr. Rose.

As to the occasion for Mr. Rose coming into Mr. Dundas' office in the middle of July, 1942; any information that we had he was mixed up in anything that was unlawful was just hearsay. [R. 321.]

As to why I didn't arrest him, we had nothing to arrest Mr. Rose for. This investigation was not secretive at all. Practically everything I learned I discussed with Mr. Rose [R. 322.]

As to whether my office, on the occasion when he said that Mr. Goodman was representing him and that I would get the invoices from you and whether I didn't get invoices sent to the Office of Price Administration from your office in which you gave my office copies, not only of all the purchases made by Mr. Rose which have been testified to in this case, the one in Ontario, the one in Pasadena, but also copies of the invoices showing the sales to the Golden Lubricants—I picked them up at your office on one occasion, after calling you for them, and they were not as I had asked for them.

Mr. Goodman: Now, I demand that they be produced at this time, and I understand you have them here, Mr. Norcop. [R. 323.]

Mr. Norcop: Do you want us to produce now what you asked about?

Mr. Goodman: I would like to do it through the witness, Your Honor.

As to whether it is fact that I received from your office a copy of the purchase by Mr. Rose of the tires from the location in Ontario, is the last one I called you for, this is the one you sent to me through the mail, a copy of the purchase from Ontario.

(Counsel has handed the witness a document from the files and records of Government counsel.)

As to Government Exhibit 14, I did not receive that portion of the exhibit which is the first document in the exhibit, which is invoice 7441, along with the document which you first showed me, which is a copy of that invoice. I knew about it before, and then when I got the copy of the invoice, I knew the number of tires, the number of tubes, and the purchase price. [R. 324.]

(The document referred to was marked Defendant's Exhibit No. 8 for identification.)

This other document, which also comes from the Government counsel's files and records, I believe I did receive that document from your office. I did not ask you for certified copies, I asked you to have Mr. Rose have this certified as being correct and a legitimate sale by Mr. Rose. Mr. Rose's signature was already on it.

As to evidence a sale to the Golden Lubricants, which is Government's Exhibit 28, I am not sure that this particular sale and transaction was not previously brought to the attention of the court and jury. I was in your office before the trial. I picked up the documents that I asked for; I have not been back there since. [R. 325.]

(The document referred to was marked Defendant's Exhibit C for identification.)

As this copy of invoice which also comes from the files and records of Government counsel, Government's Exhibit No. 10, Mr. Rose, through you, furnished me with a copy of that invoice which I picked up at your office, at my request.

(The document referred to was marked Defendant's Exhibit D for identification.)

As to this copy of another invoice dated September the 5th, 1942, and whether I got that from your office along with the other documents which I have previously identified, yes, I picked this up—well, I got it from your office, at any rate. That Mr. Rose claimed that he sold 48 new tires and 130 new tubes to the Golden Lubricants, Inc., on September the 5th, 1942, I knew that prior to picking it up; that is why I asked for it. I asked Mr. Rose what he did with [R. 326] the tires. He told me he sold them to Joe Munn, like he did the rest of them.

(The document referred to was marked Defendant's Exhibit F for identification.)

I couldn't tell you whether that is the same Joe Munn whose name appears on the invoice of September 5, 1942, as a representative of Golden Lubricants, Inc.

Before the indictment was returned in this case, I either had knowledge from sources other than Mr. Rose, or from Mr. Rose directly, or through you as his attorney, of all of the purchases of tires and tubes from the four transactions which have been related in this courtroom that he purchased, but I don't believe I did on the Slavett tires. I received the documents for every purchase that I asked for. [R. 327.]

I discovered the sale of the new tires and tubes to Mr. Rose by Mr. Slavett when I called on Mr. Humbert of the Bay Cities Transfer Company. He told me that he had picked up tires at that address. I had not previously to that date made arrangements with Mr. Humbert that he was to notify me of any and all movements of tires made on behalf of Mr. Rose. I made such arrangements upon that call that I found out he had picked up tires at 1850 East Colorado, Pasadena, California. [R. 328.]

As to whether I parked my car on many occasions a half a block south of Olympic and Hill at one of the parking stations of Mr. Rose, I never did. I parked at a lot across the street; it has no name on it, to the best of my knowledge. [R. 329.] I paid for my parking every time I ever parked. As to whether I know that is Mr. Rose's parking lot, Mr. Rose was never there. I saw him in front of the lot on one occasion.

On the occasion when I went out to 613 North Virgil Avenue when these pictures were taken [R. 330] I did not know that those tires belonged to Ben Rose. I never did find out definitely that they belonged to Mr. Rose because he denied that they belonged to him. Whether the police officer took the key out of his pocket against his will, he still denied that they were his. I couldn't say that I know now that they are his tires. I have a pretty good idea, but I couldn't state that I know that they are his.

Mr. Goodman: I ask that those four tires from the Hertz car, or one of them at least, be brought into the court room.

As to those four tires that came from the Hertz Driverless Company, I picked them up there, around October the 5th. I made a record of the pick-up of those tires. [R. 331.]



As to this one of these tires and this white tab, that is in my handwriting. I wrote that at that time.

(Counsel reads.)

"Ben Rose—Picked up a Hertz-U-Drive October 5-42—Foster."

My conclusion, that they were Ben Rose's tires, was not based upon—that is, the record that I made here, that tab, was not based upon what the gentleman told me at the U-Driver's place. Those are some of the tires that were at 3200 City Terrace. I knew that Benjamin Rose picked up those tires. I know that because Mr. Humbert told me. [R. 332.] Prior to the time that I went there, I had not called the Wilshire police station and asked for two officers to come out, particularly Officer Hamilton. I called them after I found the warehouse. After I saw Mr. Rose on the first occasion that day. I called the police officer to see what was in the warehouse, and I did not have any powers at all to go in that warehouse to find out who it belonged to, or anything else. At that time I did not have a search warrant. I did not ask the police officer to get one. I did not at any time ask the police officer Hamilton to open up the place, to get the keys from Mr. Rose.

As to whether I recall telling him "There are some new tires and tubes stored in this place. We would like to get in there"—I told him we would like to get in there, yes. [R. 333.]

I took an inventory of 67 tires plus the nine that were taken into the police station. The nine tires that were taken to the police station were the only tires not wrapped at all. Mr. Rose was not [R. 334] there all that time. I believe Mr. Rose left toward the end.

There were nine tires unwrapped. I suggested the only ones Officer Hamilton take would be the ones which were unwrapped. I did not ask Officer Hamilton to take the tires. He took them voluntarily. I did not later get a telephone call from Mr. Hamilton telling me that he was going to release the tires to Mr. Rose. I got one from Hamilton asking me if he could release them. I told him no, I would refer it to Mr. Dundas. I believe I talked to Mr. Dundas. Then I told him, so far as I was concerned, "You will have to have them there." I don't believe Mr. Dundas told me to release them. At that time Officer Hamilton did not tell me over [R. 335] the phone that he had already told Mr. Rose to come up and get his tires. He told me, if I recall, that Mr. Rose was up there in a truck to pick them up. After speaking to me, he told me he would tell Mr. Rose he couldn't deliver the tires. Mr. Rose did not tell me that these tires from the warehouse at 613 North Virgil had been sold to the United States Defense Supply Corporation. I did not ever check to see.

(Counsel shows the witness a document.)

That's the first time I ever saw that. I have seen a form of that kind before. I know what it is. It shows a purported sale to the Defense Supply Corporation of the United States Government. That does not require a certificate.

(The document referred to was marked Defendants' Exhibit F for identification.) [R. 336.]

*Cross-Examination*

By Mr. Angelillo:

The first occasion that I saw Mr. Vitagliano I did not ascertain whether he had one or more service stations at that time. I found out subsequently that he had two. I never knew Signal Motor Service belonged to him. I know where that is, but I never knew that it belonged to Vitagliano. I have been to Stanford Motor Service. I knew that was his.

(Two letters are produced.)

As to these two letters, I saw two similar. I imagine they are the same ones.

(The documents referred to were marked Defendants' Exhibit G for identification.)

I saw these two letters either on May 26th, or the following call that I made to Mr. Vitagliano. I discussed the contents of these two letters. Mr. Vitagliano showed us the letters, and told us that he had authority to sell a few tires that he had, and that this was his authority, and we told him that Mr. D'Orr was wrong on it; that had he come out and looked at the tires he would have been wrong, but up to that date it was probably all right, as long as he had the authority for Mr. D'Orr. [R. 337.]

The freeze order was effective on new tires December 12, 1941, at midnight. The freeze was continuous from that day to now on new tires, under regulations. We had regulations handed to us by our office. I became an officer of the OPA office the first of April, 1942.

As to Exhibit No. 30, I got that from W. J. "Bill" Davis. I checked the Office of the State Board of Equali-

zation at 1031 South Broadway. I checked the Department of Motor Vehicles. I asked for the license number, because Davis had told me he was not sure what kind it was. I couldn't say who wrote the word "International" on that. It was on there when I got it. I have not had occasion to check the books of Mr. Vitagliano.

As to whether I have had occasion to check the original inventory at our office, pertaining to Mr. Vitagliano, I don't believe we have, not to my knowledge, an inventory at our office of Mr. Vitagliano. An inventory is made by any service man if he had tires on or about January 5, 1942, indicating the number of tires he had in his possession. [R. 338.]

As to this truck that Mr. Graham testified about here the other day, there was some transaction had on or about September 9, 1942, wherein Mr. Vitagliano was a purchaser or in any wise connected with that transaction. [R. 339.]

I saw Mr. Vitagliano once, I believe, at our office, and once at his station. He told me he was not worried at all about the case from the start. He told me that his skirts were clean. [R. 340.]

By Mr. Norcop:

(By the Witness): I had a conversation with Mr. Rose regarding Joe Munn. Mr. Rose asked me if I had found Joe Munn yet. I laughed and said, "Oh, sure, I found him." He said, "That's a good thing, because I have sold him some more tires."



SAMUEL KILBURN DOWDEN,

on

*Direct Examination,*

testified as follows:

By Mr. Norcop:

In 1942 I was a truck driver for the Bay Cities Moving & Storage in Los Angeles. [R. 341.] Last summer I went with one of the trucks of that concern to Ontario. There were two trucks. Don Parmalee was the other driver. We went to a residence. I see some one here in court now that I saw at that residence on that date, known to me as Sam Blank. I did not see anyone else among the people sitting to your left there—not for certain.

After the trucks were loaded I drove one of them back into town, to, I think it was about 613 on Virgil. I unloaded it there. [R. 342.]

*Cross-Examination*

By Mr. Goodman:

I did not see this man sign: Ben Rose. I turned the copy of that invoice over to Mr. Humbert. Before I came to testify here today I discovered that Ben Rose had signed that delivery ticket. I knew it was Rose before I came to court here.

WILLIS S. STORMS,

on

*Direct Examination,*

testified as follows:

By Mr. Norcop:

I am an investigator for the Office of Price Administration, an agency of the United States Government. I entered that employment May [R. 343] 1st, 1942.

After I arrived at 955 South Hill I saw an attendant there. [R. 344.]

I returned about 2:00 o'clock in the afternoon, June 24th. I came back at 5:00 o'clock. I saw a man that represented himself to be Benjamin Rose or Ben Rose. I had a conversation with him. No one else was present there in hearing of the conversation. [R. 345.] I saw Ben Rose at the same location, 955 South Hill Street. I had another conversation with him. There was present in the hearing of the conversation a young man known to me or introduced himself to me as David Rose, said that he was Ben Rose's brother. That was all that was present in the hearing of my voice, so far as I know. Ben Rose immediately started to question me again as to my identity.

He said, "I have got to know something about you." And I said to Rose, "I thought we had discussed that yesterday." He said, "Well, who are you?" And I said, "It is none of your business." And I repeated, "You are not going to get me into any trouble and I haven't got any papers." He said, "I am not worried about that and I can't afford to take any chances." I said, "Well, what about the tires? Where are they?" He said, "Well, we have to go over here a few blocks." He said, "What did you decide on?" I said, "Two new 6.50 x 16 tires and two new retreaded tires."

Ben Rose and his brother and I started to walk off the lot when the defendant said, "Well, let's get in your car," meaning my car. I started the car and had driven ap-

proximately 25 or 30 feet when the defendant asked me to stop, and both he [R. 347] and his brother got out of the car and walked over a short distance, I would say 20 feet or 30 feet, to the parking lot attendant. He came back and said, "I guess we can't do no business, Mr." I just brandished my hand casually, got in my car and drove off the lot.

*Cross-Examination*

By Mr. Goodman:

I was not exactly going to try to get him to make a sale. It is not a fact that the man I saw the first and second times was David Rose, and not this gentleman here, Ben Rose. [R. 348.] When there was no deal made and they told me they couldn't sell me any tires, I got in my car and drove away. I went over to my office.

I think I met Mr. Foster on the street. While I was in there trying to make this deal, he was across the street. I picked him up I believe on Hill Street, between Tenth and Eleventh. When I left Mr. Rose and his brother, I met Foster less than five minutes. At that time I had a conversation with Mr. Foster. I told him what transpired. [R. 349.]

No. 10445.

IN THE  
United States Circuit Court of Appeals  
FOR THE NINTH CIRCUIT

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BENJAMIN ROSE and LOUIS VITAGLIANO,

*Appellants,*

*vs.*

UNITED STATES OF AMERICA,

*Appellee.*

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APPELLEE'S BRIEF.

---

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**FILED**

**DEC - 7 1944**

**PAUL P. O'BRIEN,**  
**CLERK**





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No. 10445.

IN THE

# United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

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BENJAMIN ROSE and LOUIS VITAGLIANO,

*Appellants,*

*vs.*

UNITED STATES OF AMERICA,

*Appellee.*

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## APPELLEE'S BRIEF.

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### Basis of Jurisdiction.

A. The District Court had jurisdiction to try the case under the authority of Title 18, United States Code, Section 88, and of Title 28, United States Code, Section 41, Subdivision 2.

B. The Indictment charged that appellants, together with five others, also made defendants, violated Title 18, United States Code, Section 88, in that commencing on or about December 12, 1941 and continuing until the return of the Indictment, and within the County of Los Angeles, State of California, Southern District of California, Central Division, said defendants conspired to commit offenses against the United States, that is to say, to sell, trade, lease, ship and transfer new rubber tires and tubes to consumers in violation of several statutes mentioned in the Indictment.

C. This Court has jurisdiction of the appeal under the provisions of Title 28, United States Code, Section 225 (a) and (d).



### Statement of the Case.

This is an appeal by Benjamin Rose and Louis Vitagliano from a judgment after a trial in the District Court at which appellants and three others were convicted of the offense charged in Count I of a two count Indictment.

At the conclusion of the Government's case appellants moved the Court to require the Government to elect between Counts I and II. Said Motion was granted and the Government elected to proceed on Count I whereon the Court dismissed Count II. Defendants were convicted. Appellant Benjamin Rose was sentenced to imprisonment for a term of one year and one day in a penitentiary and to pay a fine of two thousand dollars (\$2,000.00). Appellant Louis Vitagliano was sentenced to imprisonment in jail for a term of six months, and to pay a fine of one thousand dollars (\$1,000.00).

Appellants filed separate Notices of Appeal. Thereafter the trial court, upon stipulation made its order that the appeals of said appellants be tried together and that one Bill of Exceptions be filed for both of said appellants.

### Questions Involved in the Appeal.

It appears from appellants' brief that they rely upon six basic challenges which present the following questions:

- A. Does the Indictment state an offense against the laws of the United States?

This question is raised by:

1. An exception to the overruling of appellant's Demurrers.

2. An exception to the overruling of appellants' Motions In Arrest of Judgment.

- B. Did the Court abuse its discretion in denying the appellants' Motion For a Bill of Particulars?
- C. Should the Court have granted the Motion of Appellants to Dismiss at the close of the opening statement?
- D. Was the evidence sufficient to justify the verdict?
- E. Did the Court err in refusing to strike certain evidence?
- F. Is the Second War Powers Act constitutional?

**The Facts.**

The testimony, as it appears in the Bill of Exceptions, covers 224 pages. In the Supplement to Appellants' Brief it has been condensed into 98 pages. Appellee does not believe that the supplement states the evidence completely or with sufficient detail to adequately illustrate the case. Under Section IV of their brief appellants argue that the evidence is insufficient to support the verdict.

It has been found impossible to concisely restate the evidence without materially detracting from the complete record. Therefore, appellee adopts by this reference thereto the evidence as set forth on pages 126 to 340, inclusive, of the Bill of Record. In Section IV of appellee's brief the attention of the Court is particularly directed to evidence which establishes the several elements of the crime of which appellants have been convicted.

## ARGUMENT.

### I.

#### **The Indictment Adequately States an Offense Against the Laws of the United States.**

A. Appellants complain that the Indictment alleges that a conspiracy commenced on December 12, 1941, and that the Second War Powers Act mentioned in the Indictment was not adopted until March 27, 1942. Appellants through their brief refer to the Indictment as one charging a conspiracy to violate the Second War Powers Act and as if that were the only law they conspired to violate. This view of the Indictment overlooks Paragraphs 2 to 11, inclusive. A reading of said paragraphs discloses that as early as June 28, 1940 Congress adopted a law entitled "An Act to Expedite National Defense And For Other Purposes" which Act was amended on May 31, 1941 (Public Law 89, 77th Cong. Ch. 157, 1st Sess. H.R. 4534-55 Stat. 236, 1941). The pertinent portions of said Act are printed as Appendix A. Although the Second War Powers Act did not become a law until March 27, 1942 a rationing of rubber tires and tubes was embodied in the law of the land under the authority of the predecessor of the Second War Powers Act, to-wit, the aforesaid Public Law No. 89 printed herein as Appendix A.

The Indictment simply charges that a conspiracy commenced on or about December 12, 1941, at which time the prohibition against unrestricted sales and deliveries of rubber tires and tubes was controlled by the authority of "An Act To Expedite National Defense And For Other Purposes," as amended by the aforesaid Public Law No. 89.



The conspiracy continued down to the date of the return of the Indictment (January 27, 1943). During the term of the conspiracy the Second War Powers Act was adopted and during the later months of the conspiracy a prohibition of wrong doing flowed from the Second War Powers Act whereas during the first months of the conspiracy the rationing authority was grounded upon the earlier statute.

In view of the fact that the Second War Powers Act was preceded by the aforesaid earlier statutes, it is not sound argument on appellants' behalf, that the conspiracy was but a lawful agreement when entered into. Further, the Second War Powers Act was adopted March 27, 1942. The Indictment alleged that the conspiracy continued up to and including the date of the return of the Indictment. It was returned and filed January 27, 1943. All of the overt acts pleaded, and many of the overt acts proved occurred after the enactment of the Second War Powers Act.

However, it has often been held that a conspiracy may commence prior to the enactment of a law which the conspirators seek to violate, and such a conspiracy is indictable if it continues to exist after its objects become unlawful.

In *Bailey v. United States*, 5 F.(2d) 437 (C. C. A. 5th 1925), in which the Court declared:

"Although the indictment alleges that the conspiracy was formed before the passage of the Revenue Act of 1922, the overt acts to effect its objects are alleged to have been committed after the passage of that act, and the indictment charges a continuing conspiracy. The overt acts were sufficient to keep the conspiracy alive."



In *Nyquist v. United States*, 2 F.(2d) 504 (C. C. A. 6th 1924), defendants were prosecuted for a conspiracy to violate the Dyer Act. The Court said:

“It was permissible to show that the fraudulent agreement was entered upon long before the Dyer Act took effect, and was kept up after the passage of that act.”

In *Butler v. United States*, 138 F.(2d) 977 (C. C. A. 7th 1943), defendants were charged with conspiracy to violate the provisions of the Selective Training and Service Act of 1940. The opinion includes the following:

“The point is made that the second count of the indictment is invalid, in that it designates the date of the beginning of the offense prior to the effective date of the Selective Training and Service Act of 1940.

“(10) We think there is no merit in this contention, since the law is well settled that where the indictment—and such is the fact in this case—contains an allegation of the continuance of the conspiracy subsequent to the passage of the statute and up to the date of the indictment, and there is evidence of acts constituting part of the conspiracy having been committed after the effective date of the statute, the indictment is not invalid.”

In *Schefano v. United States*, 84 F.(2d) 513 (C. C. A. 5th 1936), defendants were prosecuted for a conspiracy to commit offenses against the United States by evading certain liquor tax laws. The opinion contains the following:

“It is contended that the indictment charges a conspiracy on January 1, 1934 to violate the liquor

taxing act of 1934 and, as the statute was not adopted until January 11, 1934, the indictment is void. This overlooks the allegation that the conspiracy was continuing until October 1, 1935 \* \* \* The government was not bound to show the conspiracy began on January 1, 1934. It was sufficient to prove its existence when the law was in effect."

B. The Indictment is attacked by appellants as vague, indefinite and uncertain, and further that the references to the ration orders are general. The Indictment undertakes to charge the appellants with a conspiracy rather than with a substantive offense. The charging language is as follows:

[R. 77.] "Did unlawfully, wilfully, knowingly, corruptly, fraudulently and feloniously engage in a conspiracy to commit offenses against the United States, that is to say, to sell, trade, lease, ship and transfer new rubber tires, casings and tubes to consumers and other persons in violation of the statute, executive orders, regulations and directives hereinbefore referred to."

On December 10, 1941, two days prior to the beginning of the conspiracy the Office of Production Management issued its order entitled "Supplementary Order No. M-15-b." The pertinent portions thereof are annexed hereto as Appendix B. This order contains the following:

"(c) *General Restriction on Sales and Shipments.* Except to fill purchase orders assigned an A-e or better Preference Rating, from the date of issuance of this Order until Monday, December 22, 1941, no new automobile, truck, bus, or motorcycle, farm implement, or other type of casing or tube, shall be

sold, leased, traded, delivered or transferred: Provided, That the foregoing prohibition shall not apply to tires which are sold as a part of new or used vehicles being sold and which are affixed to such vehicles at the time of their sale. And also, no person shall ship or permit to be removed from his plants, warehouses, or other places of storage, during any calendar month, beginning with the month of December 1941 quantities of any class or type of rubber goods other than tires at a rate in excess of the rates of shipment or removal of similar classes or types of rubber goods during the month of November 1941 to fill purchase orders not assigned a Preference Rating of A-10 or better, except for the purposes of filling purchase orders assigned a Preference Rating of A-10 or better."

On December 19, 1941, Donald M. Nelson as Director of Priorities, issued Amendment No. 1 to Supplementary Order No. M-15-b. The pertinent portions thereof are annexed hereto to Appendix C. Said order contained the following:

"(c) *General Restriction on the Sale of Tires*, Except to fill purchase orders assigned an A-3 or better Preference Rating, from the date of issuance of this Order until January 5, 1942, no new automobile, truck, bus, motorcycle, farm implement, or other type of tire, tire casing or tire tube, other than bicycle tires, shall be sold, leased, traded, delivered or transferred by any person, provided that the foregoing prohibition shall not apply to tires which are sold as a part of new vehicles being sold and which are affixed to such vehicle at the time of their sale."



On December 27, 1941, Donald M. Nelson as Director of Priorities, issued Supplementary Order No. M-15-c to Restrict Transactions in New Rubber Tires, Casings and Tubes. The pertinent portions are annexed hereto as Appendix D, which Order contained the following:

“(c) *Prohibition on Deliveries of New Rubber Tires, Casings, and Tubes Except to Persons Possessing Certificates.* (1) Except as provided in this paragraph and in paragraphs (g) and (h) hereof, or in regulations hereafter issued by the Office of Price Administration, no person shall sell, lease, trade, lend, deliver, ship, or transfer new rubber tires, casings, or tubes, and no person shall accept any such sale, lease, trade, loan, delivery, shipment or transfer of any such new rubber tires, casings, or tubes. (The provisions of this paragraph shall apply to all new rubber tires, casings, and tubes, whether such new rubber tires, casings, and tubes are at the date of issuance of this Order already manufactured, or whether such new rubber tires, casings, and tubes are manufactured in the future.)”

The Order, in its subdivision (e), provides in detail for the determination by the Office of Price Administration of applications for a certificate permitting certain persons to purchase and accept delivery of new rubber tires, casings or tubes and concludes in paragraph (6) of said subdivision (e) with the following:

“\* \* \* Such certificate shall be recognized by any person having new rubber tires, casings, or tubes for sale, and no sale, lease, trade, loan, delivery, shipment or transfer of new rubber tires, casings, or tubes (except as provided in paragraphs (c), (g), and (h) hereof) shall be made except on the basis of such a certificate.”



On December 30, 1941, the Office of Price Administration, Leon Henderson, Administrator, issued rubber tire regulations. The pertinent portions are annexed hereto as Appendix E. Said portions contain certain prohibitions against the sale and transfer of new tires and tubes among which are the following:

*"Eligibility to Purchase or Transfer New Tires  
or Tubes*

"Sec. 1315.401. *Permitted and Prohibited Transfers*—(a) *Prohibitions*. Except as provided in paragraphs (b) and (c) of this section, no person shall sell, lease, trade, lend, deliver, ship or transfer new tires or tubes, and no person shall accept any such sale, lease, trade, loan, delivery, shipment or transfer of any such new rubber tires or tubes. The word transfer includes any form of physical transfer, including gifts.

"(1) The prohibition in this paragraph (a) applies both to sales and to deliveries. Except as provided by paragraphs (b) and (c), it is unlawful to deliver new tires or tubes to a person even though such person has completed and paid for the purchase or agreement for transfer of new tires or tubes from the person to whom delivery is requested.

"(2) The prohibition in this paragraph (a) applies not only to the transfer of tires or tubes from one person to another, but also to the delivery by any person from a factory, warehouse, or other premises to retail store, operated or controlled by such person.

"(3) Authorizations to manufacturers and distributors to make deliveries prohibited by this section from factories and warehouses to retail stores, outlets and premises may hereafter be granted by the Office

of Price Administration. The purpose of such authorization, when granted, will be to enable dealers to replenish inventories of new tires or tubes. In order to accomplish that purpose, permitted shipments to dealers will be based upon certificates and receipts issued pursuant to Secs. 1315.601 to 1315.607, inclusive, and to paragraph (c) of this section of these regulations. Such certificates and receipts shall be transmitted by dealers in accordance with instructions which will hereafter be issued by the Office of Price Administration.

“(4) The prohibition in this paragraph (a) applies to all new tires and tubes, whether such new tires and tubes are, at the date of the issuance of this order, already manufactured, or whether such new tires or tubes are manufactured in the future.”

On January 16, 1942, the President issued Executive Order No. 9024 establishing the War Production Board. Said Order is printed as Appendix F to this brief, and on January 24, 1942, by Executive Order No. 9040, the President directed that the War Production Board perform the functions and exercise the powers theretofore vested in the Office of Production Management. Said Executive Order is printed as Appendix G to this brief.

On January 24, 1942, the War Production Board authorized the Office of Price Administration to perform certain functions with respect to the exercise of rationing control. Said Directive is printed as Appendix H to this brief.

On February 18, 1942, Leon Henderson as Administrator of the Office of Price Administration, issued an amendment to revise tire rationing regulations which is

printed as Appendix 1 to this brief, and which contain the following:

"Sec. 1315.801. Except as provided in paragraphs (b) and (c) of this section and in Secs. 1315.801 to 1315.805, it is unlawful to transfer new tires or tubes, or deliver retreaded or recapped tires, to a consumer, even though such consumer has completed and paid for the purchase or agreement for transfer of such tires or tubes from the person of whom delivery or transfer is requested."

All of the foregoing regulations were specifically referred to in the Indictment and the Indictment charged that the appellants conspired to "commit offenses against the United States, that is to say, to sell, trade, lease, ship and transfer new rubber tires, casings and tubes to consumers and other persons in violation of the statute, executive orders, regulations and directives hereinbefore referred to." It is, therefore, certain that the conspiracy charged was one which offended against the regulations which were in existence under authority of the statutes. Appellants contend that as there were many exceptions under the regulations which entitled dealers to sell and transfer new tires and tubes that it has not been charged that the things which appellants conspired to do offended the regulations. It is impossible to reconcile this contention as flowing from an understanding of the Indictment, for the Indictment alleges not only that the appellants conspired unlawfully, knowingly, corruptly, fraudulently and feloniously, but that they conspired to "sell, trade, lease, ship and transfer new rubber tires, casings, and tubes to consumers and other persons in violation of the statute, executive orders, regulations and directives hereinbefore referred



to." The language just quoted indicates that appellants are not charged with conspiring to make the sales and transfers permitted, but rather that they were charged with conspiring to make the sales and transfers which were prohibited.

It has long been the law that it is unnecessary to negative the exceptions to the statute. A parallel exists in the language of the National Prohibition Act conspiracy cases of which *Davis v. United States*, 274 Fed. 928 (C. C. A. 9th 1921), is an example. Defendants were charged with conspiring to commit the offense of "knowingly, wilfully, and unlawfully transporting, selling, bartering, furnishing, and possessing intoxicating liquor, namely, whisky, in violation of the National Prohibition Act \* \* \*." Following conviction a motion was made in Arrest of Judgment and the denial of that motion was the only error assigned and before the Court of Appeals. The Court treated the subject as follows:

"It is contended that it is fatally defective, in that it fails to allege that the liquor, the transportation of which was the object of the conspiracy, was not to be used for nonbeverage purposes, under the provisions of section 3 of title 2 of the act. The plaintiffs in error cite authorities to the proposition that where a statute in defining an offense 'contains an exception or proviso in its enacting clause which is so incorporated with the language describing and defining the offense, that the ingredients of the offense cannot be accurately and clearly described if the exception is omitted, it must be shown that the accused is not within the exception,' citing 14 R. C. L. 188. But the text-writer so quoted goes on to say:



'On the other hand, if the language of the section defining the offense is so entirely separable from the exception that the ingredients constituting the offense may be accurately and clearly defined without any reference to the exception, the pleader may safely omit any such reference, as the matter contained in the exception is matter of defense and must be shown by the accused.'

We think the present case comes clearly within the rule last quoted. \* \* \*"

To like effect is *Hockett v. United States*, 265 Fed. 588 (C.C.A. 9th 1920). The Indictment was demurred to but held sufficient. The Indictment charged that the defendants conspired to commit an offense against the United States, "that is to say, to wrongfully, unlawfully, and feloniously transport, and cause to be transported, in interstate commerce, intoxicating liquors, to-wit, five hundred cases of whiskey to and into the State of Arizona, which said State of Arizona was then and there a State, the laws of which prohibited the manufacture or sale therein of intoxicating liquor or liquors for beverage purposes;". Overt acts were then pleaded. It was urged that the statute did not make it an offense to transport intoxicating liquors in interstate commerce into a "dry" state for any and all purposes, but excepted from its operation shipments of such liquor intended for scientific, sacramental, medicinal and mechanical purposes, and that the law of Arizona did not forbid the use of such liquors for such excepted purposes; that therefore, in order to make out a conspiracy to commit an act constituting an offense against the United States the indictment should allege that the intent was to ship the liquors in question for some purpose

not within the exceptions. In holding this argument bad the Court said in part:

"In answer to this objection it is to be observed that we are dealing with an indictment charging a conspiracy to commit the offense, and not with a charge of the substantive offense denounced in the statute. If, therefore, the designation of the offense alleged to be the object of the conspiracy would be sufficient as a charge of the substantive offense, no reason is suggested, nor is any perceived, why a different or more specific statement should be required in describing it as the object of the conspiracy. In other words, if in an indictment charging a direct violation of the Reed Amendment it would not be required to negative the exceptions contained in the act, then clearly no such allegation is required here.

"(3) That the description of the offense in this indictment alleged as the object of the conspiracy would be sufficient in charging the substantive act is fully sustained by this court in *Shelp v. United States*, 81 Fed. 694, 696, 26 C. C. A. 570, and cases therein cited. That was an indictment for violating a provision of the act providing a civil government of Alaska (23 Stat. 24), which forbids 'the importation, manufacture and sale of intoxicating liquors in said district, except for medicinal, mechanical and scientific purposes.' It was objected that the indictment was bad for failing to allege that the act charged was not within these exceptions, but the court held that the exceptions constituted no part of the definition of the offense; that they were purely matters of defense, and need not be negatived in the indictment, but could be proven at the trial, if relied upon as a defense. See, also, *United States v. Simpson* (D.

C.), 257 Fed. 689, where a like conclusion is reached as to the sufficiency of an indictment under the act here involved; the court holding that the exceptions found in the act afforded only ground for a defense.

“(4) It is said that without such allegation there is nothing in the indictment to show that the purpose of the conspiracy was unlawful. But it is alleged that the purpose of the defendants was to ‘wrongfully, unlawfully, and feloniously trasport,’ etc., such intoxicating liquors. This is sufficient to import an unlawful motive; the question of its truth being a matter of proof at the trial. \* \* \*”

See, also:

*Dahl v. United States*, 234 Fed. 618 (C. C. A. 9th 1916).

The charging paragraph of the indictment sets forth the elements of the offense of conspiracy in that it alleges the appellants fraudulently engaged in a conspiracy to violate the Second War Powers Act by selling, trading, leasing, shipping and transferring new tires and tubes to consumers and other persons in violation of tire rationing regulations. An examination of the indictment as a whole discloses that any reader thereof would be apprised that appellants were charged with conspiring to sell and transfer tires in violation of tire rationing regulations. The entire language of the regulations referred to in the indictment was to show a prohibition against selling and transferring rubber tires and tubes, except under circumstances which would arise only upon the positive action of a rationing authority whereby exemption would be created in favor of certain persons to whom certificates evidencing that fact would be issued by the rationing authority.



The case of *Hagner v. U. S.*, 285 U.S. 427, 52 S.Ct. 417, 76 L.Ed. 861 (1932), has become a leading case upon the sufficiency of indictments.

"The rigor of old common law rules of criminal pleading has yielded, in modern practice, to the general principle that formal defects, not prejudicial, will be disregarded. The true test of the sufficiency of an indictment is not whether it could have been made more definite and certain, but whether it contains the elements of the offense intended to be charged, 'and sufficiently apprises the defendant of what he must be prepared to meet, and, in case of any other proceedings are taken against him for a similar offense, whether the record shows with accuracy to what extent he may plead a former acquittal or conviction. *Cochran and Sayre v. United States*, 157 U. S. 286, 290; *Rosen v. United States*, 161 U. S. 29, 34.

"Section 1025 Revised Statutes (U.S.C., Title 18, Sec. 556) provides:

'No indictment found and presented by a grand jury in any district or other court of the United States shall be deemed insufficient, nor shall the trial, judgment, or other proceeding thereon be affected by reason of any defect or imperfection in matter of form only, which shall not tend to the prejudice of the defendant.'

"This section was enacted to the end that, while the accused must be afforded full protection, the guilty shall not escape through mere imperfections of pleading."

The *Hagner case* has become a landmark in the law of criminal pleading and has been cited with approval extensively. See *Hopper v. United States*, 142 F.(2d) 181 (C.C.A. 9th 1943):



“At least since *Hagner v. United States*, 285 U.S. 427, 52 S.Ct. 417, 76 L.Ed. 861, the federal court has determined the sufficiency of criminal pleadings on the basis of practical as opposed to technical considerations.”

The modern rule by which the sufficiency of an indictment is to be tested is also succinctly stated in *Martin v. United States*, 299 Fed. 287 (C.C.A. 4th 1924):

“(2) In an indictment, the mere multiplication of words never does any good, and often leads to a miscarriage of justice. The sufficiency of a criminal pleading should be determined by practical, as distinguished from purely technical, considerations. Does it, under all the circumstances of the case, tell the defendant all that he needs to know for his defense, and does it so specify that with which he is charged that he will be in no danger of being a second time put in jeopardy? If so, it should be held good. Section 1025, Revised Statutes (Comp. St., Sec. 1691). If it does not and its deficiencies cannot be adequately supplied by a bill of particulars, it should be stricken down.”

The selling and transferring of tires under the exceptions permitted by the regulations could not meet the language of the indictment for such sales would not be (a) in violation of the statute, executive orders, regulations and directives, or (b) unlawful, or (c) corrupt, or (d) fraudulent. The second test prescribed in the decision of *Martin v. United States* is whether the indictment pleads the charge sufficiently to protect the defendant from double jeopardy. Appellants contend that the charge is pleaded too broadly, which is not the case. It is plain, however,

that appellants have been placed in jeopardy under an indictment which charges a conspiracy to violate the statutes by violating the several tire regulations promulgated thereunder and the purpose of the conspiracy was sufficiently broad that it would be impossible to again plead an indictment for the same offense without running afoul of the identification pleaded in the indictment now before the court. Seven conspirators are named and the specific rationing regulations cited. The purpose of the conspiracy is mentioned, and ten overt acts are set forth with considerable detail.

The essence of the crime of conspiracy is the unlawful combination, and as the object of the conspiracy is the accomplishment of some unlawful act, the means by which the unlawful act is to be accomplished need not be set forth in the indictment.

*Proffitt v. United States*, 264 Fed. 299 (C.C.A. 9th 1920).

It is unnecessary for the indictment to set forth the object of the conspiracy with the same particularity of detail as in cases of completed acts constituting a past offense and this ruling has been applied even where the offense which was the object of the conspiracy has been consummated. Conspiracy to commit a crime is a different offense from the crime which is the object of the conspiracy.

*United States v. Rabinowich*, 238 U.S. 78, 35 S.Ct. 682, 59 L.Ed. 1211 (1915);

*Williamson v. United States*, 207 U.S. 425, 285 S.Ct. 163 52 L.Ed. 278 (1908);

*Wong Tai v. United States*, 273 U.S. 77, 47 S.Ct. 300, 71 L.Ed. 545 (1927).

II.

**The Ruling of the Court in Denying the Appellants' Motions for a Bill of Particulars Was Within the Proper Exercise of Its Discretion.**

The demand for bill of particulars filed by appellant Vitagliano [R. 87] demanded information as follows:

1. What particular provisions of the regulations referred to in the indictment did the defendants conspire to violate?
2. What statute defining offenses against the United States did the defendants conspire to violate?
3. In what way does conspiracy to violate any of the provisions of any of the regulations referred to in the indictment constitute an offense?

The demand for bill of particulars filed by appellant Rose is of similar substance [R. 84].

The office of a bill of particulars is to inform defendants of particular facts, not to draw out a brief from the government upon the legal theories of the prosecution. The indictment cited the regulations involved. The request for a citation to the statute was also out of keeping with the purposes of a bill of particulars.

Application for a bill of particulars is addressed to the sound discretion of the Court and there being no abuse of this discretion the action of the trial court in denying a bill will not be disturbed.

*Wong Tai v. United States*, 273 U.S. 77, 47, S.Ct. 300, 52 L.Ed. 278 (1927).



III.

**The District Court Did Not Err in Denying the Defendants' Motion to Dismiss the Government's Case at the Close of the Opening Statement.**

The single authority cited by appellants in support of their argument on this subject does not appear to treat the subject of opening statements at all.

*United States v. Weissman*, 266 U.S. 377, 69 L.Ed. 334.

In the closing portion of the opening statement Government counsel said [R. 113]:

"I haven't by any means given you all of the details that will be revealed to you."

Counsel apparently was following the practice favored in such decisions as *Stuthman v. United States*, 67 F.(2d) 521 (C.C.A. 8th 1933), where the following language appears:

"The opening statement of counsel is intended to advise the jury concerning the facts involved so as to prepare their minds for a better understanding of the evidence to be heard. Its purpose is to give the jury an idea of the nature of the action and defense. How elaborate it shall be made is largely left to the discretion of the attorney, but to relate the testimony at length would not be good practice nor ordinarily tolerated. It is only when the opening statement of counsel clearly affirmatively shows that plaintiff cannot recover that the court will grant judgment or direct a verdict thereon."



After the motion was made, the Court stated [R. 116]:

"I noticed in the opening statement that the Government only stated a few facts; and I am going to give the Government an opportunity if they desire, to make a further opening statement and whether or not they expect to prove all the allegations of the indictment"

After some discussion [R. 116-124] Government counsel, with the Court's permission, added to his opening statement [R. 124-126] including in his further remarks the following [R. 124]:

"We intend to prove, gentlemen, each and every part of this indictment, \* \* \*"

Further authority for the appropriateness of the Court's ruling is found in these cases:

*Best v. District of Columbia*, 291 U.S. 411, 54 S.Ct. 487, 78 L.Ed. 882 (1934);

*McGovern v. Hitt*, 64 F.(2d) 156 (App. D.C. 1933);

*Lucas v. Hamilton Realty Co.*, 105 F.(2d) 800 (App. D.C. 1939).

IV.

**The Evidence Was Sufficient to Justify the Verdict.**

The conviction rests largely upon circumstantial evidence and appellants challenge it upon that ground. In this connection reference is made to *Smith v. United States*, 157 Fed. 721 (C. C. A. 8th 1907), in which case the Court said:

“True, there is no direct evidence of the conspiracy. If that were necessary, it rarely, if ever, could be proved. Conspirators do not work in the light. They prefer darkness literally and figuratively. They frequently obscure their purpose by formal and technically correct instruments of writing, leaving their real purpose for execution, notwithstanding the writing. The effects and results of a conspiracy can be observed and proved, but rarely can one get a glimpse or make proof of the secret conferences which inaugurate it. For these manifest reasons proof of a criminal combination to do an unlawful act can rarely be made except by light reflected from its consequences or results.

“We had occasion recently in the cases of *Thomas and Taggart v. United States* (just decided) 156 Fed. 897, to consider the question now before us. We there said:

“‘A preconcerted plan to do an unlawful act must from the nature of the case be usually established by inferences drawn from the relation of the parties from the acts done and from the results achieved.’”

Appellant's contention that the overt acts pleaded in the Indictment are not in themselves criminal is not meritorious.

There must be an overt act but it need not be of itself a criminal act.

*Duplex Press Co. v. Deering*, 254 U.S. 443, 41 S. Ct. 172 (1921);

*United States v. Rabinowich*, 238 U.S. 78, 35 S. Ct. 682, 59 L.Ed. 1211 (1915);

*Marino v. United States*, 91 F.(2d) 691 (C.C.A. 9th 1937).

No formal agreement between the parties is essential to the formation of the conspiracy.

*Fowler v. United States*, 273 Fed. 15 (C.C.A. 9th 1921);

*United States v. Hirsch*, 100 U.S. 33, 25 L.Ed. 539 (1879);

*Shook v. United States*, 10 F.(2d) 151 (C.C.A. 5th 1926).

The testimony established the facts to be as follows:

Appellants collaborated to acquire and conceal a stock of new tires and tubes during the early days of rationing and continuing throughout the life of the conspiracy.

On or about May 22, 1942, defendant Taplin bought out the stock of new tires and tubes of a dealer named Novisoff who did business as Perfect-Made Tire Company and who was retiring from the tire business. He paid \$4,800 therefor. Defendant Weinstein took delivery of said stock of tires and tubes the following Sunday [R. 129].

On May 25, 1943 defendant Taplin purchased fourteen additional tires from Novisoff. At that time Novisoff said to him, "How the dickens can you sell tires? We have only sold a few tires. I don't understand how you

can dispose of them. You cannot sell them, because of rationing. We have only sold a very few." Defendant Taplin told him that Weinstein was connected with a lot of physicians and surgeons who were entitled to new tires [R. 131].

The said tires were observed on May 26, 1942, by a Los Angeles City Police Officer packed in trucks at a gasoline service station in the vicinity of 12th and Stanford Street [R. 134-137].

Appellant Vitagliano was present and said that along with five other people he owned the tires. He named appellant Rose and defendant Taplin as among his co-owners.

The preceding day William Fitzer, an OPA investigator, had observed the same tires at the same place and had also talked with appellant Vitagliano at that place about the tires. There were approximately 318 tires and 900 tubes at that time. Defendant Taplin was also present. Appellant Vitagliano produced the invoices showing that the tires and tubes had been billed to Taplin. Vitagliano told Fitzer that Taplin owned the tires, whereon Taplin said that he had bought them as an investment and planned on buying wherever he could under the impression that prices would rise as tires became scarce. Taplin also said that it was intended to store the tires in Bekins Warehouse near 4th and Alameda, and reiterated that he had complete ownership of the tires [R. 140-142].

The investigator later observed the same trucks containing the tires parked across the street from the Bekins Warehouse which Taplin had mentioned and observed Taplin and Vitagliano go into the Bekins Warehouse and



come out and leave the scene. Later the trucks were driven to a garage at 9th and Crocker Street [R. 143].

A day or two later the witness was present at an interview with Taplin at the OPA local office at which Taplin stated that the tires were owned by Vitagliano, Weinstein and himself, each owning a one-third interest. Reminded that this was a different statement than he had given before he specifically repudiated his earlier claim of sole ownership [R. 144].

The tires were next observed being unloaded by Taplin and Vitagliano and defendant Weinstein at a building connected with a gasoline service station on City Terrace [R. 145].

When appellant Vitagliano went into the Bekins Warehouse office as aforesaid he asked the attendant there if tires could be stored and taken out without certificates, the attendant said, "No, sir; they couldn't be." Whereon Vitagliano left and thereafter took the tires to the building connected with the service station [R. 148-149].

Defendant Weinstein had been present when the trucks used in the transportation of the tires were rented [R. 150].

Exhibit No. 8 is an inventory of the tires taken by an OPA investigator and bearing defendant Taplin's signature [R. 152-153].

In September, approximately four months later, defendant Taplin told another OPA investigator, Mr. Foster, that he had sold the tires to defendant Brown and showed an invoice, Exhibit No. 9 [R. 154].

The previous day the investigator attempted to contact Taplin and found defendant Weinstein at his place of

business. The tires had all been removed from the City Terrace location [R. 155].

To the same effect is the testimony of OPA investigator Earnest [R. 161].

September 29, 1942 a van loaded with tires was taken into the Arlington Van and Storage warehouse and the tires put in the set-off space where they remained for four days and were then removed by two men, one of them believed by the manager to be appellant Rose. The tires were taken out late at night [R. 157].

At the conference in the OPA office at which defendant Taplin changed his story that the tires were owned entirely by himself to the statement that appellant Vitagliano and defendant Weinstein were equal partners with him, said defendant Taplin was called upon by another OPA investigator, Mr. Dundas to explain a shortage in the tires which was apparent from the comparison of the invoices, Exhibits No. 3 and 4, and the inventory, Exhibit No. 8. Defendant Taplin stated he didn't know how the shortage had occurred [R. 164-166]. Said defendant admitted originally having received the tires invoiced.

In July, 1942, appellant Rose rented a store room at 613 North Virgil in Los Angeles, stating to an employee of a bank who rented it to him that he wanted to store some furniture and equipment, and that his business was the purchase and sale of equipment. He occupied the premises during the months of August, September and October, 1942 [R. 167].

In September, 1942, appellant Rose rented storage space at 5901 Sunset Boulevard, Los Angeles, from Mr. Randall [R. 169]. Police Officer Hamilton of the Los Angeles

Police Department observed a pile of paper and boxes from which tubes had been taken scattered about the premises at 613 North Virgil on September 19, 1942, six weeks after Rose took possession [R. 254], and identified Exhibits No. 21 and 21-A as a fair and reasonable representation of the appearance of that place at that time. Before the picture was taken the officer had removed nine unwrapped tires from the premises [R. 254-255]. Immediately prior thereto appellant Rose had been observed in the immediate vicinity of the building by another city police officer, Fred H. Doane, and had tried to escape and in so doing made a left-hand turn with such haste as to scrape his car against the side of the building [R. 242-244]. Appellant Rose at first denied to officer Hamilton that he had keys to the building and stated that he didn't have anything in the building. Nine tires in addition to those shown by the photo, Exhibits No. 21 and 21-A were taken from the building after keys had been found upon the person of appellant Rose [R. 247-255]. One of the tires was labeled "Perfect-Made Tire Company" which was the name under which Novisoff, who had sold the original consignment to Taplin did business [R. 130; Ex. 2].

Defendants acquired tires on other occasions. Sam Parsner sold 38 tires to defendant Brown on September 9, 1942, at Los Angeles. Appellant Vitagliano was present and helped load the tires. These tires are enumerated on Exhibit No. 22 [R. 224-225]. The truck used to pick up the tires had been loaned to appellant Vitagliano on September 9, 1942, by Mr. Graham, manager of a provisions company. Vitagliano told Graham he wanted to borrow a truck to haul some oil [R. 233-234]. The



license number of the truck, as given by its owner, had also been jotted down on the back of the invoice, Exhibit No. 22, by Mrs. Parsner who made out the invoice [R. 227-234].

OPA investigator Foster talked to defendant Brown about Parsner's invoice. This took place at Brown's place of business known as Rappan Service. Brown was asked if he had purchased Parsner's tires. He replied that he didn't want to say whether he had or not. After some questioning Foster told Brown he had seen the bill. Brown replied, "Well it doesn't have my signature on it." Finally Brown admitted he had bought the tires but stated he had sold them but didn't remember the name of the buyer. He said he would produce the invoice but did not have it at the time and suggested that the investigator return the next day to see the invoice [R. 228]. The following day defendant Brown showed Foster an invoice and gave him a copy, Exhibit No. 23. Exhibit No. 23, the invoice given OPA investigator Foster by Brown for the purpose of demonstrating that he had made a lawful sale of the tires to a dealer purports to show that the same was to T & M Tire Service and that the sales tax number of that purchaser was AA17452 and that one Jack Briffit received the tires for the proprietor of T & M Tire Service. Mr. Montgomery testified that he had been proprietor of the T & M Tire Service until March, 1942 and had used a truck in the business but that he had been out of the business since that time. He did not know defendant Brown and did not buy any tires from him. His sales tax number was not AA 17452 but was AA 89008. He did not have an employee named Jack Briffit and did not buy any tires of the description shown on Exhibit



No. 23 after he went out of business in March. (The purported sales were made many months thereafter.) Montgomery did not deal in new tires except on consignment, his business was used tires [R. 230-231]. The sales tax number shown on Exhibit No. 23 was the *bona fide* number of Henry Immerman, a piano dealer in Los Angeles, who never had any dealings in tires [R. 233].

In fabricating the story of a sale of the Parsner tires and making out a false invoice, defendant Brown was aided by his recollection of a firm style he had seen on a truck at his station as disclosed by the record at pages 240-241. It there appears that Sam Rappan was once the owner of the Rappan Service Station, that thereafter defendant Brown operated that station, that Rappan re-acquired the station during December, 1942, and that between October 15, 1941 and December 16, 1942, Rappan had a truck that had "T & M Tire Service" printed upon it. It was a truck he had purchased from a fruitman [R. 240-241].

Another instance of issuance of a false invoice to seemingly account legitimately for the disposition of tires and tubes is disclosed in the testimony of Norman Irwin, auditor for the Eagle Oil Company [R. 260-264], Exhibit No. 28.

Sam Kelber, a tire dealer in Ontario, California, met defendant Weinstein and appellant Vitagliano in Los Angeles and told them that he had decided to liquidate his tire business. Weinstein told him he thought he could find him a customer and thereafter took appellant Rose to Kelber's place of business. On August 1, 1942, Weinstein, Rose and others went to Kelber's home in Ontario. Appellant Vitagliano was also present in the living room

of Kelber's home when the tires were tallied. The tires involved were inventoried on Exhibit No. 14 and were purchased by appellant Rose for \$4,575 [R. 175-179].

The tires were transported from Ontario in two closed vans by C. A. Humbert who was doing business as Bay Cities Express and Transfer Company. The tires were all wrapped, the tubes were in boxes. The windows of the room at 613 North Virgil, where the tires were taken, were all boarded up.

Appellant Rose told Humbert, the owner of the vans, that if he needed any tires Rose would go down to the OPA for him and save him a lot of red-tape [R. 194].

During August, 1942, defendant Weinstein met Reuben Slavett who was in the tire business under the style Dandy Tire Co. at 1850 East Colorado Street, Pasadena. Weinstein told Slavett he could find a buyer for Slavett's tires and took him to see appellant Rose. Slavett sold Rose a quantity of tires for \$2,900. These tires are listed on Exhibit No. 20. The next day Rose, in company with drivers from the same trucking concern that had carted the previous purchase of tires from Ontario, called at Slavett's place of business in Pasadena. Appellant Vitagliano and defendant Weinstein were also present. There were 212 new tires and 798 new tubes involved in this transaction. They constituted substantially all the stock of tires Slavett had. On August 22, which was the date said transaction was consummated the aforesaid Humbert again took his van and carted the tires to 613 North Virgil. This was at the request of appellant Rose. After this transaction had been completed, appellant Rose told Slavett that if he knew anybody else who had new

tires to sell to get in touch with him and he would compensate Slavett [R. 208-216].

Twenty days had intervened between this transaction and the purchase of tires from Kelber at Ontario.

The moving man Humbert testified that after he brought in the tires from Ontario the room at 613 North Virgil was better than three-quarters full of tires, but that when he took the tires there from the Slavett purchase at Pasadena twenty days later very few tires were left [R. 194-195].

Around the floor of the room on the day of the second delivery of tires by Humbert there was quite a pile of tire wrappings. At the request of appellant Rose the entry on Humbert's invoice was "Auto Accessories" instead of "tires" [R. 196]. The same moving man moved the original stock of tires purchased by Taplin from Novissoff from the City Terrace address to the Sunset Boulevard storeroom which appellant Rose had rented from Mr. Randall [R. 196-199].

This delivery commenced at 5:30 in the evening [R. 197] and continued until 8:00 p. m. [R. 199].

The cargo was referred to on the invoice, Exhibit No. 18, at appellant Rose's request as "Auto Accessories" instead of "tires". Some of the tires were sent to another address in another truck belonging to Humber [R. 198]. At the time of the transfer of the tires of the Ontario purchase to 613 North Virgil, Rose used the name of "Sam Blank" in his dealings with Mr. Parmalee, Humbert's truck driver [R. 236]. The trucks used by Humbert were closed vans [R. 197]. The rear of the trucks were covered with tarpaulin, the tires inside were com-



pletely covered up. On the first occasion they were hidden under furniture pads on orders from appellant Rose. The delivery to the premises rented from Mr. Randall was timed so that it was getting dark when the trucks arrived [R. 203].

Thereafter appellant Rose asked Humbert, the owner of the trucking service, whether the OPA had called up. He wanted to know if the OPA had asked where the tires went to. Finally the invoice showing the trucking transaction was falsified so that it did not show the destination of the tires. It was made out that way at appellant Rose's request, Exhibit No. 18 [R. 199-200].

On July 21, 1942, Mike Kreling, a service station operator, sold appellant Rose 48 new tires and 128 or 130 new tubes. After the price had been quoted Rose and before he accepted the offer, he stated that he desired to take up the matter with his partner. When the sale was consummated Kreling thereby liquidated his stock of tires and gave Rose an invoice, Exhibit No. 10 [R. 158].

Defendants Weinstein and Taplin attempted to purchase tires from one Steinberg a couple of months after the freezing of tires but Steinberg declined to sell [R. 264].

Appellant Rose called on one Paddock, a tire jobber at a time estimated as May, 1942, and examined 60 or 70 tires, all new in wrappers. Paddock referred him to the owner of the tires but no sale was consummated [R. 265].

In May, 1942, defendant Weinstein and appellant Vitagliano purchased a quantity of tires from one Davis. In checking the tires Davis missed the invoice and found



that either Weinstein or Vitagliano had it in his pocket [R. 272-274].

On October 1, 1942, appellant Rose went to the Hertz truck service in Los Angeles and rented a closed-in body truck. When it was returned it had four tires in it. One of the tires bore a pasted slip on which the words "Perfect-Made Tire Co.", 1161 South Main Street, Los Angeles" were written. This was the trade style under which Novisoff did business. Novisoff is the man who first sold tires to defendant Taplin in May, 1942 [R. 171-172].

On October 13, 1942, Mr. Foster, an OPA investigator, saw appellant Rose go into a driveway on Sunset Boulevard. He waited for some time and then walked in, leaving his car outside. There was an Oldsmobile on the premises with quite a large trunk over its rear. The trunk was open. The rear had been filled with tires and some tubes. Rose was covering them over with a blanket when he observed Foster. He said, "Can't I do anything without you being on my trail?" The door was open to a warehouse at the premises and with Rose's consent Foster looked in and counted eight large tires and approximately 100 new tubes. In the center of the room were numerous wrappings of tires and a large number of empty tube boxes. Foster made the statement that Rose had gotten rid of quite a few tires out of there recently. Rose inquired how he knew it. Foster replied he knew how many had been in there [R. 302-303].

Sometime subsequent to March, 1942, Leo Isenhower, a laundry man, went to a small office at a service station

in Los Angeles. Appellant Rose was in the office and the subject of inner tubes was mentioned. Isenhower talked to Rose about it.

"The sum and substance of the conversation was that he had some inner tubes for sale. I needed them. He said he could sell them to me, and I said I would like to get them, so I made an agreement to buy them from him. \* \* \* I met him on a different day, a day or two later, it was convenient to him and convenient to me, and I got them at another place. It was near 9th and LaBrea, on a vacant lot, next to a large building. \* \* \* He brought along the inner tubes I had agreed to buy from him, and I bought them from him. It seems to me there was five or six; I think there were six boxes of them. I think there were six in a box. That would be 36 inner tubes. I paid him. I can't recall exactly what price that I paid him was, but it was close to what we had originally agreed on. \* \* \* I was not a retail tire dealer at that time. I am a laundry man. I did not have any certificates from any rationing board to obtain these tubes" [R. 276-279].

Appellants attempt to make a point that there is no testimony that the tubes were new. However, from the foregoing it is to be noted that the tubes were boxed six in a box, and the following quotation indicates that the parties contemplated new tubes. Considering the testimony together with the circumstances that appellant Rose was observed packing new tubes in quantity into his car from a stock of new tubes, it was reasonable for the jury to infer that the sale to Isenhower was of new tubes.

"I was getting the tubes for both trucks; and it was my impression that inner tubes, new inner tubes,

were frozen and the only place that a private party could buy them would be to find somebody that had them that he could get them from. I learned different since then, but that was my impression at the time. I felt that I was perfectly O.K. to go ahead and buy the tubes from him, so I never talked about it. I didn't think I was violating any law" [R. 279].

Appellant tried this part of the case on the theory that the particular tubes were new. He tried to show that the witness Isenhower had been granted immunity in consideration of his testimony. Although this effort was fruitless to him it tended to establish that it was recognized in the trial of the case that the matters testified to by Isenhower concerned a sale of new tubes in a manner that constituted a violation of the regulations [R. 282].

Appellant Rose went to the service manager of a used car concern in September, 1942, and offered to sell new tires at a price of \$35.00 a piece in lots of 100 or more, or \$37.50 a piece in lots of 4. These prices were clearly disproportionate to the representative price for new tires [R. 256].

On June 24, 1942, Willis S. Storms, an investigator for the OPA, went to a parking lot in Los Angeles which was operated by appellant Rose. He had a conversation with Rose as follows:

"I had a conversation with him. No one else was present there in hearing of the conversation. It took place in the little office building on the lot, gas station office.

"I said, 'Ben?' He said, 'Yes.' 'I want to see you for a minute.' He says, 'What about?' I said, 'Tires.' He says, 'What kind of tires?' I said,



'New tires.' 'Who sent you?' I said, 'The old gentlemen down on the parking lot on Sixth Street.' 'Why didn't he fix you up?' Mr. Rose continued. 'He told me that I would have to see you; that you were the owner.' Rose then said, 'How many tires do you want and what size?' I said, 'Well, it depends on the price.' And then he said, before I continue further, he said, 'Have you got any identification?' And I said, 'What for?' He said, 'I can't afford to take any chances, you know.' I said, 'Well, I have got the money to buy the tires and that is all I want to discuss with you.' He said, 'Well, I should know something about you. Have you got a business card or something' I said, 'No.' I said, 'You are not going to get me in any trouble and I am not going to tell you who I am. In fact, it is none of your business.' He looked me over pretty carefully. And he said, 'Well, what size?' And I said, '6.50 x 16s.' Rose said, 'Well, I can give you four beautiful new tires, Goodyear or Miller, for \$175.'

"I said, 'I could not probably afford that much.' I asked him how much new retreads would be. He says, 'I will give you four dandies for \$25 apiece.' I said, 'Well, I haven't got the money with me, but when can I get the tires?' He said, 'Well, what do you want to do? Do you want new tires or retreads?' I said, 'I don't know.'

"So he handed me a parking ticket with a telephone number on it [Ex. 32], and said, 'Call me up at this telephone number tomorrow morning and tell me what you want and I will tell you where to meet me. \* \* \* [R. 345-346.]

"I left the premises at 955 South Hill Street. I returned to those premises again the following morn-



ing at 11:00 o'clock, I saw Ben Rose at the same location, 995 South Hill Street. I had another conversation with him. \* \* \* arrived at this parking lot at 11:00 o'clock and was greeted by this young man representing himself as David Rose. Ben Rose arrived a very few minutes after I arrived on the parking lot. Ben Rose immediately started to question me again as to my identity.

"He said, 'I have got to know something about you.' And I said to Rose, 'I thought we had discussed that yesterday.' He said, 'Well, who are you?' And I said, 'it is none of your business.' And I repeated, 'You are not going to get me into any trouble and I haven't got any papers.' He said, 'I am not worried about that and I can't afford to take any chances.' I said, 'Well, what about the tires? Where are they?' He said, 'Well, we have to go over here a few blocks.' He said, 'What did you decide on?' I said, 'Two new 6.50 x 16 tires and two new retreaded tires.'

"Ben Rose and his brother and I started to walk off the lot, when the defendant said, 'Well, let's get in your car,' meaning my car. I started the car and had driven approximately 25 or 30 feet when the defendant asked me to stop, and both he and his brother got out of the car and walked over a short distance, I would say 20 feet or 30 feet, to the parking lot attendant. He came back and said, 'I guess we can't do no business, Mr.' I just brandished my hand casually, got in my car and drove off the lot." [R. 346-348.]

Following the above mentioned transaction, Mr. Hoffman of OPA had, in June, 1942, a conversation with Mr. Storms and appellant Rose at the office of the OPA as follows:

“\* \* \* I proceeded, first, to talk to Mr. Storms and Mr. Foster, in the presence of Mr. Rose, and at that time Mr. Foster and Mr. Rose—Mr. Storms informed me that Mr. Storms had been down to Mr. Rose’s service station located, I believe, on the corner of Olympic and Hill, and had had a conversation with Mr. Rose in which Mr. Rose had offered to sell Mr. Storms four new tires for, I believe, a price of \$175.00, and had offered also to sell Mr. Storms some retreaded tires for, I believe, \$16.00 or \$17.00 each.

“I then asked Mr. Rose if he was the owner and operator of this service station; and he said, ‘I refuse to answer.’ I said, ‘You have heard Mr. Storms recite what he just told me. Did that take place.’ He said, ‘I refuse to answer.’ I asked him if he knew—if he operated a parking lot known as the Capital Parking Lot, or Capital Auto Parks, to which he replied, ‘There are many Capital Auto Parks.’

“Well, he said, ‘I am speaking of the Capital Auto Park mentioned by Mr. Storms, located on 6th Street, I believe.’ He said, ‘I refuse to answer.’ I asked him if he sold tires at his service station at the corner of Olympic and Hill; and he said, ‘All service stations sell tires.’ I asked him if he sold new tires. He said, ‘I refuse to answer.’ I asked him if he sold used tires. He said, ‘Yes, we sell used tires.’ \* \* \* I said, ‘Now, did you offer to sell Inspector Storms some new tires for \$175, as he states?’ He said, ‘I never saw Inspector Storms before in my life.’ I said, ‘You mean you did not

see him before you came right here in this room?' He says, 'I have never seen him before in my life.' I said, 'You know Inspector Foster, this gentleman here?' He said, 'I never saw Inspector Foster before in my life.' \* \* \* Mr. Storms again went through and repeated that he had gone into this parking lot, after being at the Capital Auto Parks first, and there being interviewed by an attendant, then from there he had gone over to the station at Olympic and Hill and had met Mr. Rose, and that Mr. Rose at that time had offered to sell him the four new tires for \$175 and the retreaded tires for about \$16 each.

"I said, 'Did he ask you or did you offer to state that you had any rationing certificate?' Mr. Storms said, 'No.' I then said to Mr. Rose, again, 'Mr. Rose, did you offer to sell these new tires or retreaded tires to Mr. Storms?' He said, 'I never saw Mr. Storms before in my life.' \* \* \* I asked him if he had sold tires in the past and he said he had. I asked him if he sold tires without rationing certificates and he said, 'You can't sell tires without rationing certificates.' I said, 'Did you sell tires without rationing certificates?' He said, 'I refuse to answer.'

"And generally, from that point on Mr. Rose stated that he would refuse to answer any further questions." [R. 285-287.]

On the same day Appellant Rose had a conversation with Mr. Foster who related it as follows:

"After this statement had been taken from Mr. Rose, Mr. Rose told me that he would like to speak to me alone. I followed him outside. No one else went with me. We went out in the highway, toward the front door of 1033 South Broadway, where we stood.



Mr. Rose asked me if I remembered seeing him any place, and I told him I didn't believe I did. (This conversation took place in June, 1942.) He said, 'I know you. I have seen you up at Louis Vitagliano's, on his lot.' I said, 'What were you doing up there?' He said, 'What do you think?' I asked Ben at that time to tell me, I said, 'Why don't you come across and tell me what you know about this deal? It is going to make it a lot easier if you tell us all you know about these things, and let us get it over with.' He said, 'I don't think I can, as long as there is anyone writing down what I say.' He asked me if I knew Les Carston, and I said I did not. He asked me if I knew Sam Weinstein, and I said I did. He said, 'I know all of these boys too.' \* \* \* I next met him two or three weeks after that date at his service station at 955 South Hill Street. I had a conversation with him. \* \* \* I went in to talk to Ben regarding another tire movement. I asked him if he knew anything about it, and he said he possibly did, but he didn't care to discuss it. So he said, 'Jack', he said, 'You are on the wrong side of this thing. Why don't you get wise to yourself, and get in on the right side? There is some money to be made.' So I told him I wasn't interested. He said, 'Well, I know where there can be a few thousand dollars picked up if you just lay off. I know one thousand you would get right away, and I know several others that you can get, and I would be glad to take care of it for you.' I told him I wasn't interested in that at all; that I had a job to do, and I was trying to do it. About that time some fellow went by whom he knew—who Ben knew was in the tire business, those we had some trouble with, and he asked me if I saw Shorty go by, and I said yes. He said, 'You had better get out of here.' I said, 'Why?'



He said, 'Those fellows don't like to see you in here. They are liable to come back. I have gotten in trouble with them already, because they have seen me with you. If they see you in here a lot, they might think I am telling you a lot of things I shouldn't.' \* \* \* the next time I saw Ben was when he came in to Mr. Dundas' office. \* \* \* that was about the middle of July. \* \* \* In the Office of Price Administration. There was a conversation then. Rose made—I don't recall his exact words, but he said he knew he was in trouble, and he had been thinking it over, and he was just wondering how he could get out. He said, 'I am willing to spend \$500, or whatever it is, to get out of this, and get clean and straight again.' I don't recall who said it, whether Mr. Dundas or myself said it—we did not know how deep he was involved at that time, and we would like to have him tell us just how deep he was involved; what he had done. He said, 'Have you ever been threatened?' We said no we had not. He said, 'I have.' He said, 'Some of these boys I have been dealing with came around, and put a gun, laid a gun on the counter here, and said to me: 'You see this? You wouldn't want to be found lying around the road some place, would you?' They asked him, 'Do you know what that is?' He said, 'Yes, it's a gun.' And they said, 'You wouldn't want it used, or anything, would you?' He said no. They said, 'Just remember; you don't know anything when somebody comes around to ask you—' \* \* \* he said he couldn't tell us any more. We told him, so far as we were concerned we did not know just how deep he was in the thing, and if he wouldn't tell us we would have to continue with our investigation. \* \* \* I was walking north on Virgil, right in front of 611, which was an empty grocery store building, and I saw Mr. Rose pull up

to the lot right ahead of me. \* \* \* Again he made the statement to me that he thought I was on the wrong side of this, and asked me if I was still fooling around with the OPA. I said I was. He said, 'Well, you are still on the wrong side. I think you are dealing with some pretty tough boys. You are liable to get hurt.'” [R. 293-299.]

Appellants argue that if none of the overt acts are relevant, material, or competent, that there cannot be sufficient evidence to warrant a conviction. Of course the law requires that some one overt act be done pursuant to the conspiracy in order that it be established that the matter was not idle talk, but an active conspiracy.

Appellee agrees that it is necessary that at least one overt act be proved and in order to be an overt act within the meaning of the conspiracy law, it is essential that the act be done in an effort to effect the object of the conspiracy. This is the holding in the three cases cited by appellant at page 25 of his brief.

The record abounds with testimony of overt acts. The conspiracy charged was one to “commit offenses against the United States, that is to say, to sell, trade, lease, ship and transfer new rubber tires, casings and tubes to consumers in violation”, etc. [R. 78].

For what purpose did appellants at a time when the sales of tires were being restricted and strictly rationed go into the market and purchase the entire tire and tube stocks of several dealers. One of these dealers, Novisoff, said to defendant Taplin, “How the dickens can you sell tires? We have sold only a few tires” [R. 131].

The only inference to be drawn from the accumulation of the substantial stocks of several retiring tire dealers, and the rapid disposition thereof, unexplained by the pro-

duction of a single rationing certificate is that appellants acquired their large stocks of tires to effect their object of selling and transferring them without taking in certificates.

When during a period of strict governmental regulation of the tire trade, the appellants sought to conceal their activities, it can only be concluded that their activities could not stand the investigation that dealing in the open would invite. Overt Act C. [R. 78] shows an attempt by appellant Rose to conceal his acquisition of a stock of tires and their storage place, for he falsely led his landlord to believe that the premises were rented for conduct of a furniture and equipment business. Overt Act E. had like purpose.

Overt Act G., proved by Exhibit No. 28 and the testimony of Mr. Irwin [R. 260-264] shows an attempt to create a false record of sales of tires. To the same effect was the falsified record of a sale by defendant Brown of tires to the T & M Tire Service, a concern that was out of business at the time.

Appellant Vitagliano and defendant Taplin have attempted to mislead OPA investigators. Taplin told them that it was the purpose to store certain tires in Bekins warehouse. Thereafter they took the tires to the warehouse building and parked the trucks containing them out in front where they were observed by the OPA. This is no doubt what the defendant intended. However, the attendant in the warehouse testified that when he informed appellant Vitagliano that the tires could not be removed from the warehouse without certificates Vitagliano left without making any arrangement for the storing of the tires and the tires thereafter were taken in



charge by appellant Rose. It was from this stock of tires that appellant Rose loaded the trunk of his automobile at the time he was observed doing so by OPA investigator Foster.

In addition is the clear evidence of the sale of new tubes by appellant Rose to the witness Isenhower. It is clear that there must have been many other sales for the stock of tires kept in the Hollywood storage place which had been rented by appellant Rose diminished and large accumulations of tire wrappings and empty tube boxes were found lying on the floor of these places. There is nothing in the record to indicate that appellants ever received certificates from any one, although it would have been extremely simple had the stock of tires gone into legitimate trade to have offered such evidence at the trial. The only explanation ever given by any of the defendants as to disposition of the tires was the showing to OPA investigators of false invoices purporting to show that the tires had been sold to dealers. One of the dealers turned out to be a piano merchant who denied the transaction [R. 233]. All of the movements of appellants were cloaked in secrecy.

Appellant Vitagliano borrowed a truck from one Graham, telling Graham he wanted to haul oil in it, but he in fact used the truck to haul tires [R. 233-234].

Appellant Rose offered to arrange for tires to be issued to a transfer man saying that Rose would go to the OPA and save the transfer man a lot of red-tape [R. 194].

The moving man Humbert filled Rose's storage quarters at 613 North Virgil to three-quarters full of tires and twenty days later delivered another van full of tires to the address and found very few tires left [R. 164].



Appellant Rose asked him to enter the tires upon his records as auto accessories.

Appellant Rose made many statements to OPA investigator Foster which are inconsistent with the conduct of a legitimate tire dealer. Appellant Rose's transaction with OPA investigator Storms can only be explained as indicative of a plan to sell new tires without rationing certificates, a plan which was not completed as to the witness Storms because of a suspicion that Storms might be allied with law enforcement. The very price of tires quoted to Storms is palpably the price of a black market operator. The same is true of the offer by appellant Rose to sell tires to the sales manager for the Smiling Irishman. The compelling force of the evidence suggests the appropriateness of the court's language in its decision in *Henderson v. United States*, 143 F.(2d) 681 (C.C.A. 9 1944):

"(2) The proof in a criminal case need not exclude all doubt. If that were the rule, crime would be punished only by the criminal's own conscience, and organized society would be without defense against the conscienceless criminal and against the weak, the cowardly and the lazy who would seek to live on their wits. The proof need go no further than reach that degree of probability where the general experience of men suggests that it has passed the mark of reasonable doubt.

"And judges and juries do not begin the solution of the complex problems presented to them from a zero of knowledge. They start with the vast common knowledge and understanding possessed by the people. Applying such common knowledge and understanding to the evidence in this case, can there be the slightest doubt about the essentials of this case!"

V.

**The Court Did Not Err in Refusing to Strike Evidence.**

The motions to strike evidence were upon the ground that no *corpus delicti* had been proved.

There was also a motion to strike the testimony of the witness Foster upon the ground that it was hearsay. Apparently appellants' theory is that Foster testified to hearsay when he related conversations which he had with appellant Rose. Appellant Rose was not in a position to raise the objection, and as to appellant Vitagliano it is fundamental law that the statements made by a conspirator to effectuate and promote the objects of the conspiracy is binding upon all the conspirators.

*Jung Quey v. United States*, 222 Fed. 766 (C.C.A. 9th 1915);

*Williams v. United States*, 3 Fed. (2d) 933 (C.C.A. 6th 1925).

There can be no doubt from a review of the testimony that the statements made by Rose to Foster were made during the life of the conspiracy and not after it was terminated. The statements were made either for the purpose of deceiving Foster who was an investigator attempting to uncover the crime, or of dissuading Foster from continuing his investigation by threats, or of bribing him to cease his investigation, or to induce him to desert his trust and join the conspiracy. Necessarily such a purpose was in furtherance of the conspiracy. It is also noted that the statements were made long before the conspiracy ended.

VI.

**The District Court Did Not Err in Denying Defendants' Motion for Arrest of Judgment.**

A. The first ground urged by appellant is that the Indictment was defective. That subject has previously been dealt with in this brief and for that reason will not be repeated here.

B. The second ground is that Exhibit No. 26 and the tires enumerated thereon were inadmissible evidence by reason of an alleged illegal seizure of the tires. Although appellants' brief does not so state this point is apparently raised only as to appellant Rose, for appellant Rose was the only person to ever claim ownership of the tires [R. 249 and 252].

It is doubtful whether even Rose can raise the point for at the time the tires were seized even appellant Rose himself claimed that he had previously sold the tires and was not the tenant of the place where they were found and knew nothing about it [R. 299-300].

One who disclaims ownership of property seized can not complain of alleged illegality of the seizure.

*Ingram v. United States*, 113 F.(2d) 966 (C.C.A. 9th 1940).

The point was not seasonably raised in the District Court.

None of the defendants at the trial and neither appellant objected to the testimony explanatory of the tires or the observations made by witnesses at the time the tires were taken into possession of Los Angeles City police officers. This testimony appearing between pages 242 and 249, inclusive of the record, seriously incriminated the appellants.



There was never at any time a motion to suppress any evidence. There was never at any time a motion made to compel the return of any evidence to anyone. The only attack ever made upon any of the evidence relating to said tires was embodied in a long objection made when the tires were offered in evidence, and after the foundation had been laid for their introduction by testimony about the search and observations made when they were taken into possession of police officers [R. 242-248].

"Thereupon, Mr. Goodman, together with Mr. Sullivan, Mr. Norcop and Mr. Angelillo approached the bench. Mr. Goodman thereupon stated that he objected to the tires being rolled into the courtroom and exhibited to the jury, and that his objection was based upon the following grounds, to wit: that they were incompetent, irrelevant and immaterial, were illegally obtained and were being rolled before the jury's eyes for the purpose of creating prejudice and appealing to the passion and prejudice of the jury by virtue of the tremendous size of the tires and on the further ground that there was nothing unlawful in the possession of the tires by the defendant Rose, and that the tires were not connected up in any way with the other defendants, or with the commission of any overt act. (The tires that were rolled in and exhibited to the jury were very large, new truck tires.)

Mr. Shippee: I don't think those ought to be exhibited unless they have a ceiling price on them.

By the Witness: Those are the tires that I took over to the Wilshire Station and which I brought here to court myself. I have checked the numbers on those tires with the record of the numbers I made when I took Mr. Rose to the Station.

(The tires were admitted in evidence.)

The Court: For the record. Don't you have a list of them?



Mr. Norcop: Yes, we have a list.

By the Witness: That is a list of the tires there. There is one more tire than is listed. The smallest of them is a duplicate. It is this one here (indicating). The two I am pointing out now are the same type. They are eight tires listed but nine tires here.

(The document referred to was received in evidence and marked Government's Exhibit No. 26.)

Rose asked me for the tires about three or four weeks later."

Said objection did not refer to the offer of the list of tires [Ex. 26] into evidence but was a protest only at exhibition of the tires themselves.

The tires listed on Exhibit No. 26 came into the possession of the Los Angeles Police Department September 19, 1942; appellants were indicted January 27, 1943, the trial commenced on May 3, 1943. The only place in the record wherein appellants raise any objection to the use of the tires as evidence was in the above quoted objection made at the time they were offered and in the motion for arrest of judgment. Therefore, it seems inappropriate to burden this brief with a discussion of whether or not the tires were properly seized for the case appears to come within the rule recited by this court in *Peters v. United States*, 97 F.(2d) 500 (C.C.A. 9th 1938):

"(1) Nearly five months elapsed after the fire before trial of appellant. Notwithstanding knowledge of the seizure of the evidence and the taking of the photographs no motion was made to suppress the evidence. Oral evidence obtained from what we assume was an unreasonable search was first admitted without objection. Under such circumstances, the objection taken at the trial came too late. *Seguro v. United States*, 275 U.S. 106, 111, 48 S. Ct. 77, 79,

72 L. Ed. 186, and cases cited; *Cogen v. United States*, 278 U.S. 221, 223, 49 S. Ct. 118, 119, 73 L. Ed. 275; *Rocchia v. United States*, 9 Cir., 78 F. 2d 966, 970. By failing to present the matter in advance of the trial, appellant waived her constitutional rights. *Cogen v. United States*, *supra*, page 223, 49 S. Ct. page 119."

It is pointed out by Justice L. Hand in his opinion in *United States v. Salli et al.*, 115 F.(2d) 292 (C.C.A.2d 1940), that this is the rule of six circuits and in that opinion the Second Circuit became the seventh to adopt the rule. The opinion, which discusses the rule at length, includes the following comment:

"Moreover, while it was not indeed discussing a constitutional privilege, which perhaps may make a difference, in *Nardone v. United States*, 308 U.S. 338, 341, 342, 60 S. Ct. 266, 84 L. Ed. 307, the Supreme Court expressed a very positive opinion that delay may effect a surrender. There is every reason why it should do so when the facts are all available in season; nothing more unfair than to leave open a preliminary inquiry which will make the whole prosecution abortive, and thus to put the authorities and their witnesses to the trouble and expense of useless preparation. We hold therefore that the judge in the case at bar was within his powers in refusing to entertain the motions. (Incidentally Matwizkow alone could have availed himself of the objection anyway; he was the only one in possession of the barn, and his was the only constitutional privilege violated."

The rule is also followed and discussed at length in:

*Rossini v. United States*, 6 F.(2d) 350 (C.C.A. 8th 1925);

*Harkline v. United States*, 4 F.(2d) 526 (C.C.A. 8th 1925).

## VII.

### **The Second War Powers Act Is Constitutional.**

Appellants' brief accents portions of the Act not nearly as relevant as the following quotation which is given scant attention in said brief.

U.S.C., Title 50, Sec. 633, subsection 2(a)(2):

"\* \* \* Whenever the President is satisfied that the fulfillment of requirements for the defense of the United States will result in a shortage in the supply of any material or of any facilities for defense or for private account or for export, the President may allocate such material or facilities in such manner, upon such conditions and to such extent as he shall deem necessary or appropriate in the public interest and to promote the national defense."

The essential outline of the history of the statutes, executive orders, regulations, orders and directives involved in this case is as follows:

On June 28, 1940, just after the fall of France, Congress passed the Vinson Act (54 Stat. 676; 41 U.S.C.A., note preceding Section 1) delegating to the President certain powers, and on May 31, 1941, after Germany had overrun the Balkans, this law was amended, thereafter becoming known variously as the "Priorities and Allocations Act" or the "First War Powers Act" (55 Stat. 236; 41 U.S.C.A., note preceding section 1). On January 7, 1941, the President established the Office of Production Management within the Office for Emergency Management, and defined its functions, powers and duties (E.O. 8629; 6 F.R. 191). Within the OPM the President, on April 11, 1941, created the Office of Price Administration and Civilian Supply (E.O. 8734; 6 F.R. 1917), which on August 28, 1941, became OPA (E.O. 8875; 6 F.R. 4483).



On January 24, 1942, the President transferred all the powers of the Office of Production Management to the Chairman of the War Production Board (E.O. 9040; 7 F.R. 527). On the same date, the Chairman of the War Production Board, with the written approval of the President, promulgated Directive No. 1 (7 F.R. 562), which granted to the OPA the authority to exercise the powers and duties conferred upon the President with reference to the rationing of materials, including rubber, rubber tires, rubber tubes, and other rubber products at retail levels.

The foregoing, in brief, describes the derivation of authority of the agencies involved. The pertinent orders issued by these agencies were as follows:

On December 10, 1941—two days after the United States declared war on Japan—the Office of Price Administration promulgated Supplementary Order No. M-15-b, known as the “freezing order” because it froze the Nation’s stock of rubber for a temporary period. It was extended on December 19, 1941, to last until January 5, 1942 (Amendment No. 1 to M-15-B; 6 F.R. 6644). This order, in turn, was superseded on December 27, 1941, by Supplementary Order No. M-15-c (6 F.R. 6792), which established rubber tire and tube rationing regulations and authorized the OPA to enforce and carry out these regulations and to promulgate and enforce further regulations for that purpose. This order was specifically approved by the President on its face. On December 30, 1941, the Office of Price Administration issued tire rationing regulations prohibiting sales or other transfers of tires to consumers and others without certificates from local tire rationing boards (7 F.R. 72).

A system of preference ratings was created by Priorities Regulation No. 1 (August 27, 1941; 6 F.R. 4489)



and continued in Priorities Regulation No. 3 (January 12, 1942; 7 F.R. 250). On January 20, 1942, the Office of Production Management promulgated "Amendment No. 3 of Supplementary Order No. M-15-c to Restrict Transactions in New Rubber Tires, Casings and Tubes (7 F.R. 434), restricting the use of preference rating certificates.

On February 19, 1942, the Office of Price Administration promulgated "Revised Tire Rationing Regulations" (February 11, 1942; 7 F.R. 1027), as amended February 17, 1942; (7 F.R. 1089), which prohibited sales or other transfers of new rubber tires, casings and tubes to consumers and other persons without certificates from local tire rationing boards.

On March 27, 1942, after Manila, Hong Kong, and Singapore had fallen, Congress enacted the Second War Powers Act, which not only gave the President the power to allocate materials and facilities necessary in the interests of national defense, but went further and provided that any person who should violate any provision of the statute or any rule, regulation, or order thereunder, *whether theretofore or thereafter issued*, should be guilty of a crime punishable by fine or imprisonment. It was provided that the President could exercise any power, authority or discretion thus conferred on him through such department, agency, or officer of the Government, as he might direct, and in conformity with any rules or regulations which he might prescribe (56 Stat. 177; 50 U.S.C.A. App. Sec. 633.)

Without commenting upon the constitutionality of the Act, the Circuit Court of Appeals, Fourth Circuit, has affirmed a conviction brought for a violation thereof.

*Minker v. United States*, 134 F.(2d) 403 (C.C.A. 4th 1943).

The same attack upon the constitutionality of the Act involved in this case was elaborately treated in the opinion in *Henderson v. Bryan*, 46 F.Supp. 682 (Dist. Ct. So. Dist. Calif. 1942), wherein the Act was held constitutional.

The Circuit Court of Appeals of the Second Circuit has directly held the Act constitutional, in *United States v. Randall*, 140 F.(2d) 70, (C.C.A. 2d 1944):

“We entertain no doubt that the standard which the statute sets up is amply sufficient to meet the claim of invalid delegation.”

The trial court in the *Randall* case also wrote a detailed opinion reported in *United States v. Randall*, 50 F. Supp. 139.

*O'Neal v. United States*, 140 F.(2) 908 (C.C.A. 6th 1944), concerned a prosecution for violation of Title III, Section 2(a) of the Second War Powers Act, the same provisions of the Act involved in this case. The opinion reads in part:

“\* \* \* the Congress in the field of its duties may invoke the action of the executive branch in so far as the action invoked is not an assumption of its own constitutional field of action. *J. W. Hampton, Jr., & Co. v. United States*, 276 U.S. 394, 406, 48 S. Ct. 348, 351, 72 L. Ed. 624. In this decision, which upheld legislation empowering the President to increase or decrease duties imposed by the Tariff Act of September 21, 1922, the court held that in determining what one branch of the Government may do in seeking assistance from another branch, ‘the extent and character of that assistance, must be fixed according to common sense and the inherent necessities of the governmental co-ordination.’

“(6) Appellant urges that this established doctrine does not aid the validity of the statutes here attacked because, as he contends, no standards are established to which the President must conform in the exercise of the statutory powers. But Title III, Sections 2 (a)(1) and 2(a)(2) of the Second War Powers Act of 1942, although terse, imposes certain definite restrictions. The President is authorized to allocate, that is to ration, critical materials and facilities only when he is ‘satisfied that the fulfillment of requirements for the defense of the United States will result in a shortage.’ While the President is not required in so many words to make findings, he is given sweeping powers of investigation in the enforcement and administration of the statute, Title III, Section 2 (a)(3), and in light of this provision we read the word ‘satisfied’ as being equivalent to and including the word ‘finds.’ The same word, ‘satisfied,’ was used in the statute which was upheld against a similar contention in *Field v. Clark*, 143 U.S. 649, 12 S. Ct. 495, 36 L. Ed. 294. When the President is satisfied that a shortage exists, it becomes his duty to ration or allocate. But it is not the President who declares that priorities shall exist and allocations of materials and facilities be made; it is the Congress. Moreover additional standards under which the President must act are declared in the Second War Powers Act. It is true that these standards are not detailed at great length, but they are substantial. They require that when the President is satisfied that the shortage exists, allocations must be made upon conditions and to the extent that the President shall deem necessary or appropriate (1) in the public interest, and (2) to promote the national defense. The President, for instance, is not authorized to exercise this power merely because he deems it necessary or appropriate



in the public interest. It must also in his opinion be necessary or appropriate in promotion of the national defense.

“(7-9) We do not consider the lack of further detailed standards as invalidating this legislation. The Congress, acting within its legislative powers, was entitled to consider the character of the emergency confronting the nation and the ‘inherent necessities of the governmental co-ordination.’ J. W. Hampton, Jr., & Co. v. United States, *supra*. Munitions of war essential to our defense called for all the basic materials, metals, wood stuffs, cellulose, textiles, and the broadening categories of complex chemical products. They could not be manufactured if the raw materials were not conserved, and the very existence of the nation depended upon such conservation. The observation of Chief Justice Taft in J. W. Hampton, Jr., & Co. v. United States, became critically apposite here. The problems of allocation were myriad, and if the Congress were to deal with all of them it could not exercise the power to allocate at all. While the rule against the delegation of legislative power is fixed and unalterable, not depending upon the existence of emergency, the Congress, which is authorized to empower the executive to act in accordance with due legislative standards, may exercise a discretion in the fixing of those standards. In the emergency of war, the standards must be flexible enough to permit speed and efficiency of action for the national defense.

\* \* \* That the desired result of speed and efficiency of action has been attained by the rationing of materials and facilities under the Second War Powers Act of 1942 is demonstrated by the triumphant record of the American war industry. Since the President cannot order the allocations except as he deems it



necessary or appropriate in the public interest and for the common defense, which are drastic limitations, we think that no illegal delegation of legislative power exists, and the Act is valid. This conclusion is squarely supported by *Sunshine Coal Co. v. Adkins*, 310 U.S. 381, 397, 60 S. Ct. 907, 84 L. Ed. 1263."

Also see:

*Brown v. Bernstein*, 49 F.Supp. 497 (Dist. Ct. of Pa.—1943);

*United States v. Hark*, 49 F.Supp. 95 (Dist. Ct. of Mass.—1943);

*Brown v. Wyatt Food Stores*, 49 F.Supp. 538 (Dist. Ct. of Texas—1943).

### Conclusion.

From the foregoing it is respectfully submitted by the government that the judgment of the trial court was not contrary to law and that the evidence produced at the trial of the cause was ample to support the conviction of appellants as charged in the Indictment.

Respectfully submitted,

CHARLES H. CARR,  
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JAMES M. CARTER,  
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## APPENDIX A.

AN ACT To amend the Act approved June 28, 1940, entitled "An Act to expedite the national defense, and for other purposes," in order to extend the power to establish priorities and allocate material.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 2 of the Act approved June 28, 1940 (Public Numbered 671, Seventy-sixth Congress), as amended, is amended by inserting "(1)" after "Sec. 2. (a)" and by adding at the end of subsection (a) thereof the following:

"(2) Deliveries of material to which priority may be assigned pursuant to paragraph (1) shall include, in addition to deliveries of material under contracts or orders of the Army or Navy, deliveries of material under—

"(A) contracts or orders for the Government of any country whose defense the President deems vital to the defense of the United States under the terms of the Act of March 11, 1941, entitled 'An Act to promote the defense of the United States';

"(B) contracts or orders which the President shall deem necessary or appropriate to promote the defense of the United States; and

"(C) subcontracts or suborders which the President shall deem necessary or appropriate to the fulfillment of any contract or order as specified in this section.



Deliveries under any contract or order specified in this section may be assigned priority over deliveries under any other contract or order. Whenever the President is satisfied that the fulfillment of requirements for the defense of the United States will result in a shortage in the supply of any material for defense or for private account or for export, the President may allocate such material in such manner and to such extent as he shall deem necessary or appropriate in the public interest and to promote the national defense. The President shall be entitled to obtain such information from, require such reports by, and make such inspection of the premises of, any person, firm, or corporation as may be necessary or appropriate, in his discretion, to the enforcement or administration of the provisions of this section. No person, firm, or corporation shall be held liable for damages or penalties for any default under any contract or order which shall result directly or indirectly from his compliance with any rule, regulation, or order issued under this section. The President may exercise any power, authority, or discretion conferred on him by this section, through such department, agency, or officer of the Government as he may direct and in conformity with any rules and regulations which he may prescribe."

Approved, May 31, 1941.

*Ch. 157—55 Stat.*

## APPENDIX B.

6 Fed. Reg. 6406—TITLE 32—NATIONAL DEFENSE

CHAPTER IX—OFFICE OF PRODUCTION MANAGEMENT

*Subchapter B—Priorities Division Part 940—Rubber and  
Materials of which Rubber is a Component*

*Supplementary Order No. M-15-b To Restrict the Use  
of Rubber*

Whereas the further importation of crude rubber is  
imperilled:

Now, therefore, it is hereby ordered, That:

*Sec. 940.3 Supplementary Order No. M-15-b-(a) Defi-  
nitions.* For the purpose of this Order:

(1) "Rubber" means compounded liquid latex, and all  
forms and types of crude rubber and liquid latex in crude  
form, but does not include balata, gutta percha, gutta siak,  
gutta jelutong, pontianac, reclaimed rubber and scrap  
rubber.

(2) \* \* \*

(3) "Person" means any individual, partnership, cor-  
poration or other form of business enterprise.

\* \* \* \* \*

(c) *General restriction on sales and shipments.* Except  
to fill purchase orders assigned an A-3 or better Prefer-  
ence Rating, from the date of issuance of this Order until  
Monday, December 22, 1941, no new automobile, truck,

bus, or motorcycle, farm implement, or other type of casing or tube, shall be sold, leased, traded, delivered or transferred: *Provided*, That the foregoing prohibition shall not apply to tires which are sold as a part of new or used vehicles being sold and which are affixed to such vehicles at the time of their sale. And also, no person shall ship or permit to be removed from his plants, warehouses, or other places of storage, during any calendar month, beginning with the month of December 1941 quantities of any class or type of rubber goods other than tires at a rate in excess of the rates of shipment or removal of similar classes or types of rubber goods during the month of November 1941 to fill purchase orders not assigned a Preference Rating of A-10 or better, except for the purposes of filling purchase orders assigned a Preference Rating of A-10 or better.

\* \* \*

(g) *Effective date.* This Order shall take effect upon the date of its issuance.

\* \* \* \* \*

Issued this 10th day of December 1941.

J. S. KNOWLSON  
Acting Director of Priorities.

Filed, December 12, 1941

## APPENDIX C.

6 Fed. Reg. 6644 PART 940—RUBBER AND PRODUCTS  
AND MATERIALS OF WHICH RUBBER IS A COM-  
PONENT

*Amendment No. 1 to Supplementary Order No. M-15-b,  
To Restrict the use of Rubber.*

Supplementary Order No. M-15-b is hereby amended to  
read as follows:

Whereas, the further importation of crude rubber is  
imperilled:

Now, therefore, it is hereby ordered, That:

\* \* \* \* \*

(c) *General restriction on the sale of tires.* Except to  
fill purchase orders assigned an A-3 or better Preference  
Rating, from the date of issuance of this Order until  
January 5, 1942, no new automobile, truck, bus, motor-  
cycle, farm implement, or other type of tire, tire casing  
or tire tube, other than bicycle tires, shall be sold, leased,  
traded, delivered or transferred by any person, provided  
that the foregoing prohibition shall not apply to tires  
which are sold as a part of new vehicles being sold and  
which are affixed to such vehicles at the time of their sale.



## APPENDIX D.

6 Fed. Reg. 6792 RUBBER AND PRODUCTS AND MATERIALS OF WHICH RUBBER IS A COMPONENT

*Supplementary Order No. M-15-c To Restrict Transactions in New Rubber Tires, Casings and Tubes.*

Whereas the further importation of crude rubber is imperilled, and

Whereas by Executive Order No. 8629 of January 7, 1941, and Executive Order No. 8875 of August 28, 1941 the Office of Production Management has been created and charged with certain authority and duties with regard to defense and civilian supply, priorities and allocations, and

Whereas by Executive Order 8734 of April 11, 1941 the Office of Price Administration has been created and charged with certain authority and duties with regard to consumer protection, price control, and the prevention of price spiraling,

Now, therefore, by virtue of the authority vested in the Office of Production Management by the aforementioned Executive Orders 8629 and 8875, and in order better to enable the Office of Price Administration to perform the duties with which it is charged under the aforementioned Executive Order 8734,

*It is hereby ordered, That:*

*Sec. 940.4 Supplementary Order M-15-c(a) Delegation of authority to Office of Price Administration.* In addition to the powers expressly vested in the Office of Price Administration elsewhere in this Order, the Office of Price Administration is hereby authorized to exercise,

in the administration of this Order, the powers of the Office of Production Management with respect to:

- (1) The granting of exceptions and exemptions,
- (2) The interpretation of this Order,
- (3) The prescribing of forms for reports,
- (4) The prescribing of requirements with respect to the keeping of records,
- (5) The making of audits, inspections and investigations, and
- (6) The amendment of this Order in the following respects:

\* \* \* \* \*

Power to revoke this Order and to make amendments other than those hereby authorized is reserved in the Office of Production Management. Subject to the terms of this Order, the Office of Price Administration may exercise the authority and duties hereby delegated to it, through such departments, agencies, officers or employees of the United States or any State as it is or may be hereafter authorized to utilize, and in conformity with Rationing Regulation No. 1 and such other amendatory or supplementary rules and regulations as it may prescribe.

(b) *Definitions.* For the purposes of this Order:

(1) "Person" means any individual, partnership, corporation, association, government agency or subdivision, or other form of enterprise.

(2) "Rubber" means compounded liquid latex which on December 11, 1941 had not been processed or mixed in such manner that further processing is necessary to prevent early spoilage, and all forms and types of crude rubber and liquid latex in crude form, and all forms of

reclaimed rubber and scrap rubber as well, but does not include balata, gutta percha, gutta siak, gutter jelutong, and pontianac.

(3) "Tire," "Casing," and "Tube" means any tire, casing and tube capable of being used on any automobile, truck, bus, motorcycle or farm implement.

(4) "New" as applied to tires, casings, and tubes, means a tire, casing or tube that has been used less than 1,000 miles.

(c) *Prohibition on deliveries of new rubber tires, casings, and tubes except to persons possessing certificates.*

(1) Except as provided in this paragraph and in paragraphs (g) and (h) hereof, or in regulations hereafter issued by the Office of Price Administration, no person shall sell, lease, trade, lend, deliver, ship, or transfer new rubber tires, casings, or tubes, and no person shall accept any such sale, lease, trade, loan, delivery, shipment or transfer of any such new rubber tires, casings, or tubes. (The provisions of this paragraph shall apply to all new rubber tires, casings, and tubes, whether such new rubber tires, casings, and tubes are at the date of issuance of this Order already manufactured, or whether such new rubber tires, casings, and tubes are manufactured in the future.)

(2) Except as provided in subparagraphs (3) and (4) of this paragraph (c), a person selling new rubber tires, casings or tubes at a retail store, outlet, or premises, which for purposes of this Order shall mean a store, outlet or premises from which transfers or deliveries are made predominantly direct to consumers, may sell, lease, trade, lend, deliver, ship or transfer any new rubber tire, casing, or tube from such premises to a person possessing a certificate authorizing such purchase issued by the Office of Price Administration.



(3) Except as provided in paragraphs (f) and (g), no person (even upon the presentation of a certificate) shall sell, lease, trade, lend, deliver, ship or transfer any new six-ply or eight-ply rubber tires or casings of a size less than 7:00 x 20.

(4) Except as provided in paragraphs (g) and (h) hereof, or in regulations hereafter issued by the Office of Price Administration, no person shall sell, lease, trade, lend, deliver, ship or transfer new rubber tires, casings or tubes from a factory or warehouse or other premises not constituting a retail store, outlet or premises, even upon the presentation of a certificate, provided that a person selling exclusively to consumers, and only such a person, may transfer, or ship to his own retail premises. Authorization to make sales, leases, trades, loans, deliveries, shipments or transfers prohibited by this subparagraph (c) (4) may hereafter be granted by the Office of Price Administration. The purpose of such authorization, when granted, will be to enable dealers to replenish their inventories of new rubber tires, casings, and tubes, and in order to accomplish that purpose, permitted shipments to dealers will be based upon certificates and receipts issued pursuant to paragraphs (e), (f) and (g) of this Order and held by such dealers as evidence that new rubber tires, casings, and tubes have been sold pursuant to this Order.

(5) Anything in this paragraph (c) to the contrary notwithstanding, any dealer regularly engaged in selling new rubber tires, casings, and tubes exclusively at retail may, on and after January 5, 1942, sell such tires, casings, and tubes (without certificates) to another dealer, to the Reconstruction Finance Corporation, to the Rubber Reserve Corporation, to the Procurement Division of the United States Treasury, or (with the express approval of



the Office of Price Administration) to a manufacturer of new rubber tires, casings or tubes.

(6) Anything in this paragraph (c) to the contrary notwithstanding, any common carrier which on December 11, 1941 was in possession of shipments of new rubber tires, casings, and tubes consigned to a consignee may (without certificates) deliver such tires, casings, and tubes to such consignee.

\* \* \* \* \*

(e) *Acquisition of new rubber tires, casings, and tubes by persons in the categories enumerated in List A attached hereto.* Any person who believes that the vehicle for which he wishes to acquire new rubber tires, casings, or tubes is included in one of the categories enumerated in List A attached hereto may apply to the Office of Price Administration for a certificate permitting him to purchase, lease, trade, borrow, or accept delivery, shipment or transfer of new rubber tires, casings, or tubes. Such permission may be granted by the Office of Price Administration upon a showing by the applicant of the following facts:

(1) That the vehicle on which the new rubber tire, casing, or tube is to be mounted is included in one of the categories enumerated in List A, and thus constitutes an "eligible" vehicle.

(2) That the vehicle on which the new rubber tire, casing or tube is to be mounted cannot be replaced by a vehicle owned or operated by or subject to the control of the applicant, which is equipped with serviceable tires and tubes and which is not fully employed for a use specified in one or more of the categories enumerated in List A.

(3) That the new rubber tire, casing, or tube is to be installed at once on a wheel or rim, to replace a tire, casing or tube no longer serviceable.

(4) That the tire, casing, or tube, when added to all other tires, casings, and tubes in the applicant's possession, whether unmounted or mounted on a vehicle, and when that total is applied only to eligible vehicles, does not add up to more than one spare tire, casing or tube of a given size for each eligible vehicle.

(5) That the existing tire, casing, or tube cannot be recapped, retreaded or repaired for safe use at speeds at which the applicant may reasonably be expected to operate, or that such recapping, retreading or repairing cannot be obtained without inordinate delay.

(6) That the applicant agrees to trade in replaced tires, casings, and tubes on new tires, casings, and tubes purchased under this Order, or to dispose of replaced tires, casings, and tubes as may otherwise be directed by the Office of Price Administration.

Upon being satisfied that all of these facts exist, the Office of Price Administration may issue to the applicant a certificate stating the number and type of new rubber tires, casings, and tubes which the applicant is authorized to acquire. Such certificate shall be recognized by any person having new rubber tires, casings, or tubes for sale, and no sale, lease, trade, loan, delivery, shipment or transfer of new rubber tires, casings, or tubes (except as provided in paragraphs (c), (g) and (h) hereof) shall be made except on the basis of such a certificate.

\* \* \* \* \*

(g) *Sales to the Army, Navy, designated governments, and designated governmental agencies.* Nothing in this Order shall prevent any person from making a sale, lease, trade, loan, deliver, shipment or transfer of new rubber tires, casings, or tubes (without certificates) to or for the account of the following:

(1) The Army or Navy of the United States, the United States Maritime Commission, the Panama Canal, the Coast and Geodetic Survey, the Coast Guard, the Civil Aeronautics Authority, the National Advisory Commission for Aeronautics, the Office of Scientific Research and Development;

\* \* \* \* \*

(h) *Sales of new rubber tires, casings, and tubes as part of the original equipment of new vehicles.* Nothing in this Order shall prevent any person from selling new rubber tires, casings, or tubes (without certificates) as part of the original equipment (excluding spares) of new vehicles, provided that such tires, casings, or tubes, are affixed to such vehicles at the time of their sale, and that such sale is not prohibited by the terms of any other order of the Office of Production Management.

(i) *Records.* All persons affected by this Order shall keep and preserve for not less than two years accurate and complete records concerning inventories, production and sales of new rubber tires, casings, and tubes, including sales covered by paragraphs (c), (g), and (h) of this Order.

(j) *Audit and inspection.* All records required to be kept by this Order shall, upon request, be submitted to audit and inspection by duly authorized representatives of the Office of Price Administration.

\* \* \* \* \*

(n) *Effective date.* This order shall take effect immediately.

Issued this 27th day of December 1941

DONALD M. NELSON  
Director of Priorities

Approved:

WILLIAM KNUDSEN  
Director General

Approved:

SIDNEY HILLMAN  
Associate Director General.

Approved:

ROBERT P. PATTERSON  
Under Secretary of War.

Approved:

JAMES V. FORRESTAL  
Under Secretary of the Navy.

Approved:

FRANKLIN D. ROOSEVELT  
The White House

Date: December 26, 1941.



LIST A—ELIGIBILITY CLASSIFICATION

LIST OF VEHICLES WHICH MAY BE EQUIPPED WITH  
NEW RUBBER TIRES, CASINGS OR TUBES.

No certificate shall be issued unless the applicant for the certificate certifies that the tire, casing or tube for which application is made is to be mounted:

(a) On a vehicle which is operated by a physician, surgeon, visiting nurse, or a veterinary, and which is used principally for professional services.

(b) On an ambulance.

(c) On a vehicle used exclusively for one or more of the following purposes:

(1) To maintain fire fighting services.

(2) To maintain necessary public police service;

(3) To enforce such laws as relate specifically to the protection of public health and safety;

(4) To maintain garbage disposal and other sanitation services;

(5) To maintain mail services.

(d) On a vehicle with a capacity of ten or more passengers, operated exclusively for one or more of the following purposes:

(1) Transportation of passengers as part of the services rendered to the public by a regular transportation system;

(2) Transportation of students and teachers to and from school;

(3) Transportation of employees to or from any industrial or mining establishment or construction project, ex-

cept when public transportation facilities are readily available.

(e) On a truck operated exclusively for one or more of the purposes stated in the preceding sections or for one or more of the following purposes:

(1) Transportation of ice, and of fuel;

(2) Transportation of material and equipment for the building and maintenance of public roads;

(3) Transportation of material and equipment for the construction and maintenance of public utilities;

(4) Transportation of material and equipment for the construction of defense housing facilities and military and naval establishments;

(6) Transportation essential to render roofing, plumbing, heating and electrical repair services;

(7) Transportation by any common carrier;

(8) Transportation of waste and scrap materials;

(9) Transportation of raw materials, semi-manufactured goods, and finished products, including farm products and foods, provided that no certificate shall be issued for a new tire, casing, or tube to be mounted on a truck used (a) for the transportation of commodities to the ultimate consumer for personal, family or household use; or (b) for transportation of materials for construction and maintenance, except to the extent specifically provided by subsections (2), (3), (4), (5) and (6) of this section (e).

(f) On farm tractors or other farm implements, other than automobiles or trucks, for the operation of which rubber tires, casings, or tubes are essential.

(g) On industrial, mining and construction equipment, other than automobiles or trucks, for the operation of which rubber tires, casings, or tubes are essential.

### RATIONING REGULATION No. 1

This Rationing Regulation is issued pursuant to Supplementary Order No. M-15-c of the Office of Production Management, issued December 27, 1941.

1. The Office of Price Administration may exercise through local tire rationing boards such of the powers vested in it pursuant to Supplementary Order No. M-15-c of the Office of Production Management, as it may deem necessary or desirable including without limitation on the foregoing, the following powers:

(a) The power to determine whether a given applicant is an eligible purchaser;

(b) The power to determine which of the eligible applicants shall receive tires, up to the quota allotted to the local board.

2. Each such local board shall consist of three members, and shall be called the Local Tire Rationing Board.

3. Members of Local Tire Rationing Boards shall be appointed by the Office of Price Administration, and shall hold their positions as agents of the Office of Price Administration.

4. In appointing members of Local Tire Rationing Boards, the Office of Price Administration may, in its discretion, be guided by the recommendations of State and

Local Defense Councils, and may also, in its discretion, appoint as members of such boards state and local officials.

5. Subject to such exceptions as the Office of Price Administration may make, there shall be at least one Local Tire Rationing Board in every county of the United States, and in those counties where (in the opinion of the Office of Price Administration) density of population or other factors makes it impossible for one Board adequately to administer the functions contemplated by Order No. M-15-c, there shall be as many Local Tire Rationing Boards as the Office of Price Administration may consider necessary for the adequate performance of such functions.

6. Further provisions governing the establishment and operation of Local Tire Rationing Boards may be issued by the Office of Price Administration from time to time, provided that such provisions shall be consistent with paragraph 3 of this regulation.



## APPENDIX E.

### TITLE 32—NATIONAL DEFENSE.

#### CHAPTER XI—OFFICE OF PRICE ADMINISTRATION.

#### Part 1315—Rubber and Products and Materials of Which Rubber is a Component

#### Tire Rationing Regulations

\* \* \*

Whereas the further importations of crude rubber is imperiled, and

Whereas pursuant to sec 2(a), Public No. 671, 76th Congress, Third Session, as amended by Public No. 89, 77th Congress, First Session, and sec. 9, Public No. 783, 76th Congress, Third Session, and by Executive Order No. 8629 of January 7, 1941 and Executive Order No. 8875 of August 28, 1941 the Office of Production Management has been created and charged with certain authority and duties with regard to defense and civilian, supply, priorities and allocations, and

Whereas by Executive Order No. 8734 of April 11, 1941 the Office of Price Administration has been created and charged with certain authority and duties with regard to consumer protection, price control and the prevention of price spiraling, and

Whereas by Supplementary Order No. M-15-c of the Office of Production Management approved by the President and issued on December 27, 1941, and by Rationing Regulation No. 1 issued thereunder, the Office of Production Management has expressly vested in the Office of

Price Administration powers and duties with respect to transactions in new rubber tires, casings and tubes,

Now, therefore, by virtue of the authority vested in me by the aforesaid orders and statutes,

*It is hereby ordered, That:*

\* \* \*

(f) "New" as applied to tires and tubes means a tire or tube that has been used less than 1,000 miles.

(g) "Person" means any individual, partnership, corporation, association, Government, Government agency or subdivision, or other form of enterprise.

(h) "Purchase" means purchase, lease, trade, borrow or accept delivery, shipment or transfer by gift or otherwise.

(i) "Purchaser" means a person making a purchase as defined herein.

\* \* \*

(m) "Tire" means any solid rubber tire or, as applied to a pneumatic rubber tire, any casing, capable of being used on any automobile, truck, bus, motorcycle, or farm implement.

\* \* \*

(o) "Tube" means any rubber tube capable of being used within a tire casing on any automobile, truck, bus, motorcycle, or farm implement.

ELIGIBILITY TO PURCHASE OR TRANSFER NEW  
TIRES OR TUBES.

§1315.401 *Permitted and prohibited transfers*—(a) *Prohibitions.* Except as provided in paragraphs (b) and (c) of this section, no person shall sell, lease, trade, lend, deliver, ship or transfer new tires or tubes, and no person shall accept any such sale, lease, trade, loan, deliver, shipment or transfer of any such new rubber tires or tubes. The word transfer includes any form of physical transfer, including gifts.

(1) The prohibition in this paragraph (a) applies both to sales and to deliveries. Except as provided by paragraphs (b) and (c), it is unlawful to deliver new tires or tubes to a person even though such person has completed and paid for the purchase or agreement for transfer of new tires or tubes from the person of whom delivery is requested.

(2) The prohibition in this paragraph (a) applies not only to the transfer of tires or tubes from one person to another, but also to the delivery by any person from a factory, warehouse, or other premises to a retail store, outlet or premises whether or not owned, operated or controlled by such person.

(3) Authorizations to manufacturers and distributors to make deliveries prohibited by this section from factories and warehouses to retail stores, outlets and premises may hereafter be granted by the Office of Price Administration. The purpose of such authorization, when granted, will be to enable dealers to replenish inventories of new tires or tubes. In order to accomplish that purpose, permitted shipments to dealers will be based upon



certificates and receipts issued pursuant to §§1315.601 to 1315.607, inclusive, and to paragraph (c) of this section of these regulations. Such certificates and receipts shall be transmitted by dealers in accordance with instructions which will hereafter be issued by the Office of Price Administration.

(4) The prohibition in this paragraph (a) applies to all new tires and tubes, whether such new tires and tubes are, at the date of the issuance of this order, already manufactured, or whether such new tires or tubes are manufactured in the future.

\* \* \*

(2) (i) Any dealer regularly engaged in selling new tires or tubes exclusively at retail may, upon obtaining statements as specified in the following paragraph, sell new tires or tubes to (a) another dealer; (b) the Reconstruction Finance Corporation; (c) the Rubber Reserve Corporation; (d) the Procurement Divisions of the United States Treasury; or (e) a manufacturer of tires or tubes, provided that prior to a sale to a manufacturer written approval for such sale is obtained from the Office of Price Administration in Washington, D.C.

(ii) Any dealer making a sale pursuant to the preceding paragraph shall obtain, in duplicate, a statement from the purchaser, acknowledging the making of the sale, and setting forth the date of the sale, the number of tires and tubes involved, and (in the event of a sale to a manufacturer) the date of written approval by the Office of Price Administration.

(iii) Any dealer who has made sales pursuant to this paragraph (c) (2) during a calendar month shall, on the



fifth day of the following calendar month, file with the State defense council for his state a copy of all the statements, received pursuant to the preceding paragraph, covering such sales. The other copy of each such statement shall be kept by the dealer for his records.

\* \* \*

(ii) Any person making any transfer (whether by sale, lease, trade, loan, delivery, shipment or other transfer) pursuant to the preceding paragraph, shall obtain from the purchaser, in triplicate, a receipt which acknowledges the receipt and date of receipt of the tires and tubes involved and sets forth (a) the number and sizes of the tires and tubes received; (b) the name and address of the seller; (c) the correct name of the purchaser, whether a government, government agency, corporation or other person, and the address of the purchaser; and (d) if the purchase is not made by an individual but is made on behalf of the purchaser by a person who is an officer or duly authorized agent of the purchaser, the name and position of such person. In the event of a transfer pursuant to subparagraph (3) (i) (d), to a person holding an A-3 or higher preference rating, the person making the transfer shall also obtain the statement signed by the official, which statement is referred to in subparagraph (3) (i) (d).

\* \* \*

§1315.402 *Eligibility for certificate*— (a) *Certificate for tires and tubes not of obsolete type.* A certificate entitling the holder to acquire new tires and tubes, other than obsolete type new tires and tubes as defined in §1315.501(b) of these regulations, may be issued only to such persons as establish that they meet the requirements of both §§1315.403 and 1315.404.

\* \* \*

§1315.403 *Establishment of need.* Except in the case of obsolete type tires or tubes, boards may issue certificates only to applicants who show:<sup>1</sup>

(a) That the vehicle on which the new tire or tube is to be mounted cannot be replaced by a vehicle owned or operated by or subject to the control of the applicant, which is equipped with serviceable tires and tubes and which is not fully employed for one or more of the purposes specified in §1315.404.

(1) If the applicant owns, operates, or controls vehicles equipped with serviceable tires other than the vehicle for which new tires or tubes are requested, he must show that all such other vehicles are fully employed for purposes specified in §1315.404. If an applicant fails to establish this fact, he thus fails to establish that he needs new tires or tubes to enable him to perform services within the permitted classes established by §1315.404 and he must be denied a certificate.

(b) That the new tire or tube is to be installed at once on a wheel or rim to replace a tire or tube no longer serviceable.

(1) If an applicant still has tires or tubes which are serviceable, he is not entitled to purchase new tires or tubes. If the applicant fails to establish that new tires or tubes are necessary at once to enable the applicant to continue to furnish services permitted by §1315.404, he

---

<sup>1</sup>The manner in which an applicant for a certificate is to make the showings required by §§1315.403 and 1315.404 is set out in §§1315.501 to 1315.503 of these regulations. To the extent that the facts required to be shown by §1315.403 can be established by inspection of tires or tubes to be replaced, such inspection is to be made in accordance with the provisions of §1315.504.

fails to establish a need for tires or tubes and must be denied a certificate.

(c) That the new tire or tube, when added to other tires or tubes in the applicant's possession, whether or not such tires or tubes are mounted on a vehicle, does not add up to more than one spare tire or tube of a given size for each eligible vehicle.

(1) No person is entitled to more tires or tubes than are absolutely necessary to operate eligible vehicles (that is, vehicles operated for the purposes specified in §1315.404). If the applicant already has enough tires to equip the vehicles to be used for purposes specified in §1315.404 whether such tires or tubes are not in use or are in use on vehicles not used for one of the purposes specified in §1315.404, the applicant fails to establish a sufficient need for tires or tubes and must be denied a certificate. Under these circumstances he can satisfy his needs by tires or tubes taken out of his stock or inventory or removed by him from vehicles not operated for purposes specified in §1315.404.

(d) That the existing tires or tubes cannot be recapped, retreaded, or repaired for safe use at speed at which the applicant may reasonably be expected to operate, or that such recapping, repairing, or retreading cannot be obtained without inordinate delay.

(1) If the applicant can get his present tire retreaded, recapped or repaired without inordinate delay, he is required to do so. If he fails to establish that his old tire or tube cannot be made serviceable, he fails to establish his need for new tires or tubes and must be denied a certificate.



(2) If retreading or recapping means that the tire cannot be safely used at speeds required by an applicant, such as on a police car or ambulance, the applicant need not get his tire recapped or retreaded.

(3) Inordinate delay depends upon the facts of the case and the situation in the community. A week's delay for a normal commercial use would usually not be inordinate, while a week's delay in getting a police car into operation might be inordinate.

(e) That the applicant agrees to trade in replaced tires or tubes on new tires or tubes purchased with any certificate granted him, or if the applicant purchases a tire or tube by mail from a mail order house, that the applicant will within 5 days from receipt of such tire or tube sell the replaced tire or tube to a dealer.

(1) Unless the applicant agrees to trade in or sell his replaced tire or tube at the time when new tires or tubes are purchased, he must be denied a certificate.\*

§1315.404 *Eligible vehicles.* Except in the case of obsolete type tires or tubes, the Board shall not issue a certificate unless the applicant meets all the requirements of §1315.403, and, in addition, shows that the new tire or tube for which application is made is to be mounted:

(a) On a vehicle which is operated by a physician, surgeon, or visiting nurse, or a veterinary and which is used principally for professional services.

(1) The local board shall issue certificates for vehicles in this class only to doctors, nurses and veterinaries (which for purposes of certificates shall include only farm veterinaries) whose professional practice is to make regu-



lar calls outside their offices and use automobiles to make their professional calls.

(2) No certificate shall be issued unless the doctor, nurse, or farm veterinary, applying shows that the particular car on which the tire or tube is to be mounted is actually used for professional calls and is used principally for that purpose.

(b) *On an ambulance.*

(1) A certificate for new tires or tubes may be issued for any vehicle used principally as an ambulance.

(c) On a vehicle used exclusively for one or more of the following purposes:

(1) To maintain fire fighting services.

(i) A certificate for new tires or tubes may be issued for any fire fighting apparatus, including such vehicles as ladder trucks, chemical trucks, and hose trucks.

(ii) A certificate may be issued for other kinds of cars and trucks actually used for fire fighting, including trucks without special fire fighting equipment, and passenger cars, if the Board is satisfied that the vehicles in question will be used only to fight fires, or to fight fires and to perform some other service included in this paragraph (c). A statement of the additional purposes for which the vehicle is to be used shall be stated in the application for a certificate.

(iii) No vehicle equipped with tires or tubes for which a certificate has been granted shall be used by the officials in charge of fire fighting services unless they are actually engaged in directing fire fighting work, except as provided in ii hereof.

(2) To maintain necessary public police services.

(i) In issuing certificates under paragraph (c) (2) the local board shall be governed by the necessity of keeping the uniformed force and essential nonuniformed personnel of any Federal, State, or local police force in a position to render efficient service in the prevention and detection of crime.

(ii) Certificates shall not be issued for vehicles to perform police services, if such services can be performed without the use of motor vehicles. No police department shall use motor vehicles equipped with tires or tubes for which a certificate has been issued for licensing or inspection duties, when regular public transportation will serve.

(iii) No vehicle equipped with tires or tubes for which a certificate has been issued shall be used to convey police officials to or from their usual stations, except in case of emergency, nor shall such vehicles be used for official convenience, when public means of transportation will serve.

(iv) Vehicles for which certificates are issued under this paragraph (c) (2) may be used for any other purpose in this paragraph (c), but a statement of the additional purposes for which the vehicle is to be used shall be included in the application.

(3) To enforce such laws as relate specifically to the protection of public health and safety.

(i) Certificates shall be issued under this paragraph (c) (3) only for vehicles essential for the performance of the law enforcement services specifically provided for by this paragraph. The inspection of buildings, of the establishments of sellers and producers of food, and the

discharge of similar duties do not in most instances require the use of motor vehicles. Certificates shall under no circumstances be issued for vehicles for the performance of services which can be performed satisfactorily by inspectors and other officers using means of transportation available to the general public.

(ii) This paragraph provides only for law enforcement services which relate directly to the protection of the public from accident and disease. New tires or tubes are not to be made available for any law enforcement functions other than those performed by the regular police force, as provided in the preceding paragraph (c) (2), and the protection of the public health and safety, provided for by paragraph (c) (3).

(iii) No vehicle equipped with tires or tubes for which a certificate has been issued shall be used to convey public health and safety officials to and from their usual stations, except in case of emergency or for official convenience, when public means of transportation will serve.

(iv) Vehicles for which certificates are issued under this paragraph (c) (3) may be used for any other purpose, stated in this paragraph (c), but a statement of the additional purposes for which the vehicle is to be used shall be included in the application.

(4) To maintain garbage disposal and other sanitation services.

(i) Certificates for new tires or tubes may be issued for any vehicle essential to dispose of refuse of various kinds, to operate sewage systems, and for similar purposes.

(ii) No certificate shall be issued for passenger cars to be used by administrative personnel concerned with gar-



bage disposal or sanitation services, except to the extent provided in paragraph (c) (3). New tires or tubes shall be issued only for vehicles actually used to transport garbage and other refuse, to clean and repair sewers, and for similar purposes.

(iii) Vehicles for which certificates are issued under this paragraph (c) (4) may be used for any other purpose stated in this paragraph (c), but a statement of the additional purposes for which the vehicle is to be used shall be included in the application.

(5) To maintain mail services.

(i) The local boards may issue certificates for vehicles to be used for the transportation of mail by, or under a contract with, the United States.

(ii) A vehicle equipped with tires or tubes for which a certificate has been issued under this paragraph (c) (5) may be used for any of the other purposes in this paragraph (c) but a statement of the additional purposes for which the vehicle is to be used shall be included in the application for a certificate.

(d) On a vehicle, with a capacity of 10 or more passengers, operated exclusively for one or more of the following purposes,

(1) Transportation of passengers as part of the services rendered to the public by a regular transportation system.

(i) Certificates may be issued under this paragraph (d) (1) only for vehicles, performing necessary transportation service along regular routes or with regular schedules, from which the general public may obtain service upon payment of a standard fare.



(ii) No certificate shall be issued for a vehicle on which the general public cannot obtain transportation, except to the extent provided for in paragraphs (d) (2) and (d) (3).

(iii) Vehicles for which certificates are issued under this paragraph (d) (1) may be used for any other purpose in this paragraph (d) but a statement of the additional purposes for which the vehicle is to be used shall be included in the application.

(2) Transportation of students and teachers to and from school.

(i) Certificates shall be issued under this paragraph (d) (2) only for school busses. A school bus will not lose its character as such because it is used to transport other employees of the school as well as teachers.

(ii) No vehicle equipped with tires or tubes for which certificates have been granted shall be used for excursions of any character. Transportation shall be provided only from the homes of students and teachers or from regular school bus stops to the regular places of instruction.

(iii) Vehicles for which certificates are issued under this paragraph (d) (2) may be used for any other purpose stated in this paragraph (d), but a statement of the additional purposes for which the vehicle is to be used shall be included in the application.

(3) Transportation of employees to or from any industrial or mining establishment or construction project, except when public transportation facilities are readily available.

(i) Certificates shall be issued under this paragraph (d) (3) only for busses used to transport workers to

places of employment which cannot be easily reached by means of transportation available to the public. No certificate shall be issued where the workers can conveniently reach the place of employment, or go from place to place while on the job, by using public transportation facilities.

(ii) The local boards may issue certificates under this paragraph (d) (3) where, although public transportation facilities exist, such facilities are inadequate to provide reliable and rapid transportation essential to uninterrupted production.

(iii) Vehicles for which certificates are issued under this paragraph (d) (3) may be used for any other purpose stated in this paragraph (d), but a statement of the additional purposes for which the vehicle is to be used shall be included in the application.

(e) On a truck operated exclusively for one or more of the purposes stated in the preceding sections or for one or more of the following purposes:

(1) Transportation of ice and of fuel.

(i) In issuing certificates under this paragraph (e) (1), the local board shall be governed by the necessity for preserving public health and maintaining industrial production.

(iii) A truck for which certificates are issued under this paragraph (e) (1) may be used for any other purpose stated in this paragraph (e) or for any of the purposes stated in paragraphs (a), (b), (c), and (d), but a statement of the additional purposes for which the truck is to be used shall be included in the application for a certificate.

(2) Transportation of material and equipment for the building and maintenance of public roads.

(i) Because of the importance of public roads to the functioning of the industrial and military system, certificates may be issued for trucks, snow plows and similar equipment to be used for the building and maintenance of public roads.

(ii) A truck for which a certificate is issued under this paragraph (e) (2) may be used for any other purpose stated in this paragraph (e), or for any of the purposes stated in paragraphs (a), (b) (c), and (d), but a statement of the additional purposes for which the truck is to be used shall be included in the application for a certificate.

(3) Transportation of material and equipment for the construction and maintenance of public utilities.

(i) For the purposes of this subsection the term "public utilities" shall include gas, electric, and water supply systems, telephone and telegraph systems, transportation systems the facilities of which are available to the general public (railroads, airlines, street car lines, etc.) and similar public service institutions, whether publicly or privately operated.

(ii) Certificates may be issued for any truck used to transport supplies, material and equipment for the construction, maintenance and repair of public utilities, as defined above.

(iii) A truck for which a certificate is issued under this paragraph (e) (2) may be used for any other purpose stated in this paragraph (e), or for any of the purposes stated in paragraphs (a), (b), (c), and (d), but a state-



ment of the additional purposes for which the truck is to be used shall be included in the application for a certificate.

(4) Transportation of material and equipment for the construction and maintenance of production facilities.

(i) In issuing certificates under this paragraph (e) (4), the local board is to adhere strictly to the requirement that trucks are to be granted new tires or tubes only to transport materials, supplies, and equipment for the construction and maintenance of factories, mines and similar production establishments.

(ii) A truck for which a certificate is issued under this paragraph (e) (4) may be used for any other purpose stated in this paragraph (e), or for any of the purposes stated in paragraphs (a), (b), (c), and (d), but a statement of the additional purposes shall be included in the application for a certificate.

(5) Transportation of material and equipment for the construction of defense housing facilities and military and naval establishments.

(i) Certificates may be issued under this paragraph (e) (5) for trucks not owned by the Army or Navy to be used in the construction of new housing facilities, to be occupied principally by workers in defense plants, and in the construction of cantonments, navy yards, docks and other military and naval establishments directly controlled by the armed forces of the United States.

(ii) A truck equipped with tires or tubes for which a certificate has been issued under this paragraph (e) (5) may be used for any of the purposes stated in paragraphs (a), (b), (c), and (d) but a statement of the additional



purposes shall be included in the application for a certificate.

(6) Transportation essential to render roofing, plumbing, heating, and electrical repair services.

(i) Certificates may be issued for trucks to be used in rendering these essential repair services: roofing, plumbing, heating, and electrical repair services. These services may be performed on any buildings and houses whether or not designated in paragraph (c) (5) or elsewhere in this section.

(ii) A truck equipped with tires or tubes for which a certificate has been issued under this paragraph (e) (6) may be used for any other purpose stated in this paragraph (e) or for any of the purposes stated in paragraphs (a), (b), (c), and (d), but a statement of the additional purposes for which the truck is to be used shall be included in the application for a certificate.

(7) Transportation by any common carrier.

(i) For the purpose of this paragraph (e) (7), the term "common carrier" shall include any carrier of freight by rail, motor, or water (using trucks to render a part of its services), required by law to furnish services to the general public at standard rates, fixed in advance.

(ii) For the purpose of this paragraph (e) (7), the term "common carrier" shall not include any carrier which renders services only to persons whom it chooses as its customers or on terms separately arranged for each customer, and for each service it renders.

(iii) A certificate may be issued for any truck used by a common carrier to render freight services.

(iv) A vehicle for which a certificate is issued under this paragraph (e) (7) may be used for any other purpose stated in this paragraph (e) or for any of the purposes stated in paragraphs (a), (b), (c), and (d), but a statement of the additional purposes for which the vehicle is to be used shall be included in the application for a certificate.

(8) Transportation of waste and scrap materials.

(i) Certificates may be issued under this paragraph (e) (8) for trucks which are to be used for transporting waste and scrap materials, including waste paper, scrap-iron, scrap rubber, and similar commodities which may be reused in production.

(ii) A vehicle equipped with tires or tubes for which a certificate has been issued under this paragraph (e) (8) may be used for any other purpose stated in this paragraph (e), or for any of the purposes stated in paragraphs (a), (b), (c), and (d), but a statement of the additional purposes for which the vehicle is to be used shall be included in the application for a certificate.

(9) Transportation of raw materials, semimanufactured goods, and finished products, including farm products and foods, provided that no certificate shall be issued for a new tire or tube to be mounted on trucks used (a) for the transportation of commodities to the ultimate consumer for personal, family, or household use; or (b) for transportation of materials for construction and maintenance except to the extent specifically provided by paragraphs 2, 3, 4, 5, and 6 of this paragraph (e).

(i) Certificates may be issued for trucks used to transport raw materials, semimanufactured goods, and finished products, including farm products and foods, except (a)

transportation of commodities to the ultimate consumer for personal, family, or household use; and (b) transportation of materials for construction and maintenance except to the extent provided by paragraphs 2, 3, 4, 5, and 6 of this paragraph (e).

(ii) No truck equipped with tires or tubes for which a certificate has been issued shall be used to deliver milk or other foods to a consumer for personal, family, or household use, or to make such deliveries of other commodities for a department store, grocery store, or similar sales outlet.

(iii) No truck equipped with tires or tubes for which a certificate has been issued shall be used for the transportation of materials for construction or maintenance except to the limited extent provided in paragraphs 2, 3, 4, 5, and 6 of this paragraph (e).

(iv) A truck for which a certificate has been issued under this paragraph (e) (9) may be used for any other purpose stated in this paragraph (e) or for any of the purposes stated in paragraphs (a), (b), (c), and (d), but a statement of the additional purposes for which the truck is to be used shall be included in the application.

(f) On farm tractors or other farm implements, other than automobiles or trucks, for the operation of which rubber tires or tubes are essential.

(1) Certificates may be granted for farm tractors and other farm implements for the operation of which rubber tires or tubes are essential.

(2) Nothing in this paragraph (f) shall be construed to permit the issuance of a certificate for rubber tires or tubes when the tractor or other implement can operate or can be adapted to operate without such tires or tubes.



(g) On industrial, mining, and construction equipment, other than automobiles or trucks, for the operation of which rubber tires, casings or tubes are essential.

(1) Certificates may be issued for industrial, mining, and construction equipment, including such equipment as derricks, bulldozers, and drills, for the operation of which rubber tires or tubes are essential.

(2) Nothing in this paragraph (g) shall be construed to permit the issuance of a certificate when the equipment can operate or can be adapted to operate without such tires or tubes.

#### APPLICATIONS FOR CERTIFICATES

§1315.501 *Application for authority to purchase tire or tube.* (a) Any person who believes that his vehicle comes within one of the classifications set forth in §1315.404 may file with the Board an application for authority to purchase new tires or tubes not of an obsolete type.

\* \* \*

§1315.508 *Notation of reasons for action.* When the Board determines that an application shall be granted, the reasons therefor shall be noted upon the application, together with the number of new tires and tubes allotted to the applicant.

In all cases where an application is refused, the reasons for such refusal shall be noted upon the application.



## TIRE AND TUBE CERTIFICATES

§1315.601 *Notification.* After acting upon an application the Board shall notify the applicant of its decision. In cases where the Board authorizes an applicant to purchase new tires or tubes, the Board shall immediately issue to such applicant a nontransferable certificate for the purchase of new tires and tubes. No certificate shall be issued authorizing the purchase of more tires or tubes than have been allotted for one vehicle by the Board.

§1315.602 *Form of certificate.* (a) The nontransferable certificate for the purchase of new tires and tubes is O. P. A. Form No. R-2, a copy of which is set forth in the appendix to these Regulations.<sup>2</sup> The certificates shall be serially numbered and shall be divided into four parts each bearing the same serial number; (1) a part to be retained by the dealer as a record which shall be designated as part A; (2) a part to be retained by the dealer as the basis for replenishing his stocks which shall be designated as part B; (3) a part to be forwarded by the dealer to the Board which has issued the certificate, which shall be designated as part C; and (4) a part to be given by the dealer to the purchaser, which shall be designated as part D.

\* \* \*

§1315.803 *Records to be kept by dealers.* (a) Every person selling new tires or tubes shall: (1) On January 31, 1942, and at the close of business on the last day of every month thereafter (in addition to the report on Form PD-216,<sup>3</sup> required to be filed on December 31, 1941), take

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<sup>2</sup>See note at end of document.

<sup>3</sup>Form PD-216, Office of Production Management, headed: Dealers' Report of Stocks of New Tires and Tubes of Any Description on Hand on December 12, 1941.

an inventory of all new tires and tubes in his possession or control, and keep a record thereof; (2) maintain a file containing all certificates which have been presented by applicants to whom sales of new tires and tubes have been made; (3) prepare reports requested by the Board in his area and by the Office of Price Administration.

§1315.804 *Replenishment of stocks.* Dealers shall hold a copy of all receipts and statements received pursuant to §1315.401 (c)(3) and shall hold all parts of certificates received (O. P. A. Form R-2, part B), and transmit them only in accordance with instructions of the Office of Price Administration, which will hereafter be issued.

\* \* \*

§1315.806 *Preservation of records.* All persons shall keep records in accordance with the requirements elsewhere provided in these regulations for the keeping of records. In addition, all persons affected by these regulations shall keep and preserve for not less than 2 years accurate and complete records concerning inventories, production and sales of new tires and tubes, and shall make them available at all times for inspection by the Office of Price Administration.

(Information concerning Forms R-1, R-2, or R-3, which were filed as part of the original document, may be obtained by addressing the Office of Price Administration.)

Issued this 30th day of December, 1941.

These Regulations shall become effective this 30th day of December, 1941.

LEON HENDERSON,  
Administrator.

(F. R. Doc. 41-9875; Filed December 30, 1941; 4-26 p. m.)

## APPENDIX F.

### EXECUTIVE ORDER 9024.

#### ESTABLISHING THE WAR PRODUCTION BOARD IN THE EXECUTIVE OFFICE OF THE PRESIDENT AND DEFIN- ING ITS FUNCTIONS AND DUTIES.

By virtue of the authority vested in me by the Constitution and statutes of the United States, as President of the United States and Commander in Chief of the Army and Navy, and in order to define further the functions and duties of the Office for Emergency Management with respect to the state of war declared to exist by Joint Resolutions of the Congress, approved December 8, 1941, and December 11, 1941, respectively, and for the purpose of assuring the most effective prosecution of war procurement and production, it is hereby ordered as follows:

1. There is established within the Office for Emergency Management of the Executive Office of the President a War Production Board, hereinafter referred to as the Board. The Board shall consist of a Chairman, to be appointed by the President, the Secretary of War, the Secretary of the Navy, the Federal Loan Administrator, the Director General and the Associate Director General of the Office of Production Management, the Administrator of the Office of Price Administration, the Chairman of the Board of Economic Warfare, and the Special Assistant to the President supervising the defense aid program.



2. The Chairman of the War Production Board, with the advice and assistance of the members of the Board, shall:

- a. Exercise general direction over the war procurement and production program.
- b. Determine the policies, plans, procedures, and methods of the several Federal departments, establishments, and agencies in respect to war procurement and production, including purchasing, contracting, specifications, and construction; and including conversion, requisitioning, plant expansion, and the financing thereof; and issue such directives in respect thereto as he may deem necessary or appropriate.
- c. Perform the functions and exercise the powers vested in the Supply Priorities and Allocations Board by Executive Order No. 8875 of August 28, 1941.
- d. Supervise the Office of Production Management in the performance of its responsibilities and duties, and direct such changes in its organization as he may deem necessary.
- e. Report from time to time to the President on the progress of war procurement and production; and perform such other duties as the President may direct.

3. Federal departments, establishments, and agencies shall comply with the policies, plans, methods, and procedures in respect to war procurement and production as determined by the Chairman; and shall furnish to the



Chairman such information relating to war procurement and production as he may deem necessary for the performance of his duties.

4. The Army and Navy Munitions Board shall report to the President through the Chairman of the War Production Board.

5. The Chairman may exercise the powers, authority, and discretion conferred upon him by this Order through such officials or agencies and in such manner as he may determine; and his decisions shall be final.

6. The Chairman is further authorized within the limits of such funds as may be allocated or appropriated to the Board to employ necessary personnel and make provision for necessary supplies, facilities, and services.

7. The Supply Priorities and Allocations Board, established by the Executive Order of August 28, 1941, is hereby abolished, and its personnel, records, and property transferred to the Board. The Executive Orders No. 8629 of January 7, 1941, No. 8875 of August 28, 1941, No. 8891 of September 4, 1941, No. 8942 of November 19, 1941, No. 9001 of December 27, 1941, and No. 9023 of January 14, 1942, are hereby amended accordingly, and any provisions of these or other pertinent Executive Orders conflicting with this Order are hereby superseded.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE,  
January 16, 1942.

## APPENDIX G.

### EXECUTIVE ORDER 9040.

#### DEFINING ADDITIONAL FUNCTIONS AND DUTIES OF THE WAR PRODUCTION BOARD.

By virtue of the authority vested in me by the Constitution and the statutes, as President of the United States and Commander in Chief of the Army and Navy, and for the purpose of assuring the most effective prosecution of war procurement and production, it is hereby ordered as follows:

1. In addition to the responsibilities and duties described in paragraph 2 of Executive Order No. 9024, of January 16, 1942, the Chairman of the War Production Board, with the advice and assistance of the members of the Board, shall:
  - a. Perform the functions and exercise the powers heretofore vested in the Office of Production Management.
  - b. Perform the functions and exercise the powers vested in the Supply Priorities and Allocations Board by Executive Order No. 8942 of November 19, 1941.
  - c. Perform the functions and exercise the authority vested in the President by Section 120 of the National Defense Act of 1916, (39 Stat. 213).
2. Paragraph 1 of said Executive Order No. 9024 of January 16, 1942, is amended to provide that the Lieutenant General in charge of War Department Production, and the Director of the Labor

Division of the War Production Board shall be members of the War Production Board vice the Director General and Associate Director General of the Office of Production Management.

3. The Chairman of the War Production Board may exercise the powers, authority, and discretion conferred upon him by this or any other Order through such officials or agencies and in such manner as he may determine; and his decisions shall be final.
4. The Office of Production Management, established by Executive Order No. 8629 of January 7, 1941, is abolished and its personnel, records, property, and funds are transferred to the War Production Board.
5. Executive Order No. 8629, of January 7, 1941, is rescinded, and Executive Order No. 9024, of January 16, 1942, and any other Executive Orders the provisions of which are inconsistent with the provisions of this Order, are amended accordingly.

(signed) Franklin D. Roosevelt

THE WHITE HOUSE

January 24, 1942.

## APPENDIX H.

Directive 1  
Sept. 30, 1942

### WAR PRODUCTION BOARD

#### PART 903—DELEGATIONS OF AUTHORITY

[Directive 1 as of September 30, 1942]

#### DELEGATION OF AUTHORITY TO THE OFFICE OF PRICE ADMINISTRATION WITH RESPECT TO RATIONING

Pursuant to the authority vested in me by Executive Order No. 9024 of January 16, 1942, and Executive Order No. 9040 of January 24, 1942, and in order to delegate to the Office of Price Administration authority to provide for the equitable rationing of products at the retail level, *It is hereby ordered*, That:

§ 903.1. *Directive 1.* (a) The Office of Price Administration is authorized and directed to perform the functions and exercise the power, authority and discretion conferred upon the President by section 2 (a) of the Act of June 28, 1940 (Pub. Law 671, 76th Cong., 54 Stat. 676) as amended by the Act of May 31, 1941 (Pub. Law 89, 77th Cong., 55 Stat. 236) with respect to the exercise of rationing control over (1) the sale, transfer or other disposition of products by any person who sells at retail to any person, and (2) the sale, transfer or other disposition of products by any person to an ultimate consumer. The term "ultimate consumer," as used by this directive, means a person acquiring products for the satisfaction of personal needs as distinguished from one acquiring products for industrial or other business purposes. The term "person", as used in this directive, includes an



individual, partnership, association, business trust, corporation or any organized group of persons, whether incorporated or not: *Provided*, That in no event shall this paragraph (a) be deemed to authorize the Office of Price Administration to control the acquisition of products by or for the account of any of the following:

(1) The Army or Navy of the United States, the United States Maritime Commission, The Panama Canal, the Coast and Geodetic Survey, the Coast Guard, the Civil Aeronautics Authority, the National Advisory Commission for Aeronautics and the Office of Scientific Research and Development; or

(2) Government agencies or other persons acquiring such products for export to and consumption or use in any foreign country.

(b) The authority of the Office of Price Administration under this directive shall include the power to regulate or prohibit the sale, transfer or other disposition of products to any retailer who has acted in violation of any rationing regulation or order prescribed by the Office of Price Administration hereunder, and shall include the power to regulate or prohibit the sale, transfer or other disposition of products to any wholesaler or other supplier of any retailer, directly or indirectly, if such wholesaler or other supplier has acted in violation of any rationing regulation or order prescribed by the Office of Price Administration hereunder. The Office of Price Administration is likewise authorized to require such reports and the keeping of such records, and to make such investigations, as it may deem necessary or appropriate for the administration of the rationing powers conferred

herein; and it may take such measures as it may deem necessary or appropriate for the enforcement of any rationing regulation or order prescribed by it pursuant to this directive.

(c) The Office of Price Administration may exercise the power, authority and discretion conferred upon it by this directive through such officials, including part time and uncompensated special agents, and in such manner as it may determine.

(d) The Chairman of the War Production Board will, on request of the Office of Price Administration, advise the Office of Price Administration as to the portion of existing products available for rationing by the Office of Price Administration under this directive.

(e) The Chairman of the War Production Board may from time to time delegate to the Office of Price Administration such additional powers with respect to the exercise of rationing control, or amend the delegation herein in such manner and to such extent, as he may determine to be necessary or appropriate.

(f) Nothing herein shall be construed to limit or modify any order heretofore issued by the Director of Priorities of the Office of Production Management, nor to delegate to the Office of Price Administration the power to extend, amend or modify any such order.

(E.O. 9024, Jan. 16, 1942, 7 F.R. 329, E.O. 9040, Jan. 24, 1942, 7 F.R. 527; sec. 2 (a), Pub. Law 671, 76th Cong., as amended by Pub. Law 89, 77th Cong.)

Issued January 24, 1942.

## APPENDIX I.

### PART 1315—RUBBER AND PRODUCTS AND MATERIALS OF WHICH RUBBER IS A COMPONENT

#### REVISED TIRE RATIONING REGULATIONS—

#### TIRES AND TUBES, RETREADING AND RECAPPING OF TIRES, AND CAMELBACK

Pursuant to the authority vested in me by Supplementary Order No. M-15-c of the Office of Production Management, issued December 27, 1941, and by Rationing Regulation No. 1 thereunder, and by War Production Board Directive No. 1, issued January 24, 1942, and by Supplementary Directive No. 1B, issued February 2, 1942.

*It is hereby ordered, That:*

\* \* \*

#### *Tire and Tube Quota*

§ 1315.301 *Prohibition.* (a) The Office of Price Administration shall fix quotas stating the maximum number of new tires and tubes and retreaded or recapped tires for the purchase of which certificates may be issued by Boards during a single calendar month. No Board shall issue a certificate for the purchase of a new tire or tube or a retreaded or recapped tire in excess of its quota.

(b) Boards may issue certificates for the purchase of new passenger tires of an obsolete type as defined in paragraph (d) of § 1315.503 of these regulations (§§ 1315.151 to 1315.1199, incl.), without regard to their quotas.

\* \* \*



*Tires and Tubes for Vehicles Eligible  
Under List "A"*

§ 1315.401 *Permitted and prohibited transfers and deliveries to consumers*—(a) *Prohibitions*. Except as provided in paragraphs (b) and (c) of this section, and in §§ 1315.801 to 1315.805, incl., of these regulations, (§§ 1315.151 to 1315.1199, incl.), no person shall make any transfer of new tires or tubes, or delivery of retreaded or recapped tires, to a consumer; and no consumer shall accept any such transfer or delivery.

(1) The prohibition in paragraph (a) of this section applies to sales and deliveries and physical transfers involving a change either in use or location as set forth in § 1315.801. Except as provided in paragraphs (b) and (c) of this section and in §§ 1315.801 to 1315.805, incl., it is unlawful to deliver new tires or tubes, or retreaded or recapped tires, to a consumer, even though such consumer has completed and paid for the purchase or agreement for transfer of such tires or tubes from the person of whom delivery is requested.

(2) The prohibition in paragraph (a) of this section applies to new tires or tubes whether such tires or tubes are at the date of the issuance of these regulations already manufactured or whether such tires or tubes are manufactured in the future, and applies to retreaded or recapped tires whether such tires are retreaded or recapped at the date of the issuance of these regulations (§§ 1315.151 to 1315.1199, incl.), or whether such tires are retreaded or recapped in the future.

(3) Until February 19, the effective date of these regulations (§§ 1315.151 to 1315.1199, incl.), any consumer may obtain any retreaded or recapped tire from



any person, including tires which he left to be retreaded or recapped on his behalf. After February 19 no consumer may accept delivery of a retreaded or recapped tire except in exchange for a certificate issued pursuant to these regulations (§§ 1315.151 to 1315.1199, incl.), whether or not he provided the tire carcass to be retreaded or recapped, but he may accept redelivery of such tire carcass if it has not been retreaded or recapped.

(b) *Transfers of new tires or tubes to consumers.*

(1) Any retailer or distributor may transfer a new tire or tube to any consumer in exchange for a certificate authorizing such purchase issued by a Board.

(2) Any wholesaler may transfer any new tire or tube to a consumer in exchange for a certificate authorizing such purchase issued by a Board: *Provided*, That such consumer purchased, leased, or otherwise acquired new rubber tires or tubes direct from such wholesaler's warehouse during the calendar year 1941.

(i) The restriction set forth in paragraph (b) (2) shall apply only when the wholesaler sells such tires directly from his wholesale warehouse. It shall not apply when the wholesaler makes such sale to a consumer from the separate premises of its company-owned retail outlet.

(3) Any manufacturer may transfer any new tires or tubes to a consumer in exchange for a certificate authorizing such purchase issued by a Board: *Provided*, That such consumer purchased or leased new rubber tires or tubes direct from such manufacturer's factory or warehouse during the calendar year 1941.

(i) The restrictions set forth in paragraph (b) (3) shall apply only when the manufacturer sells such tire or tube directly from his factory or warehouse. It shall not

apply when the manufacturer makes such sale to a consumer from the separate premises of its company-owned retail outlet.

\* \* \*

(c) An applicant must establish:

(1) That the passenger automobile upon which the tire or tube is to be mounted cannot be replaced by a passenger automobile owned or operated by, or subject to the control of the applicant, which is equipped with serviceable tires or tubes and which is capable of being, but is not, fully employed for one or more of the purposes specified in paragraphs (a) to (d) of § 1315.405.

(i) If the applicant owns, operates, or controls passenger automobiles equipped with serviceable tires or tubes, other than the passenger automobile for which new tires or tubes are requested, he must show that all such vehicles capable of being employed for the purposes for which tires are sought are fully employed for one or more of the purposes specified in paragraphs (a) to (d) of § 1315.405. If an applicant fails to establish that fact, he fails to establish that he needs tires or tubes for the purposes listed in those paragraphs, and he must be denied a certificate.

(2) That the tire or tube for which application is made is to replace a tire or tube used by the applicant and that such tire is not serviceable or must be recapped or retreaded without delay, or that such tube cannot be repaired: *Provided*, That the applicant need not show that the tire for which application is made is for replacement purposes when application is made for one spare of a given size as original equipment for a vehicle included in paragraphs (a) to (d) of § 1315.405.

\* \* \*

*Transfers and Deliveries of New Tires and Tubes,  
Retreaded or Recapped Tires and Camelback*

§ 1315.801 *Permitted and prohibited transfers of new tires and tubes*—(a) *Prohibitions*. Except as provided in §§ 1315.401, 1315.804, and paragraphs (c), (d), (e), and (f) of this section of these regulations (§§ 1315.151 to 1315.1199, incl.) no person shall transfer a new tire or tube, and no person shall accept any such transfer of a new tire or tube.

(1) The word “transfer” is very broadly defined. It includes not only transfers by a sale, lease, or trade of a new tire or tube, but also by gift from one person to another and includes the transfer of any legal or equitable right or interest in any tire or tube. Again, it applies to any transfer from one person to another even though no change in “title” is involved. For example, unless expressly authorized by these regulations, transfers may not be made of new tires or tubes to a person by a dealer even though the person had previously bought and paid for the tires or tubes. Similarly, tires or tubes imported into this country and held in customs at a point of entry may not be released to the claimant unless he is authorized by these regulations to accept them.

(2) Unless specifically exempted, all physical transfers involving a change in the location or use of tires or tubes are included. Thus, if a dealer in tires or tubes removes a tire from his stock and mounts it on a vehicle owned by him, a transfer has occurred within the meaning of these regulations. Furthermore, a change in physical location involving a movement of a tire from one establishment to another is a transfer, although routine shifts in stock within a single building are not transfers within



these regulations. It should be noted, however, that freedom to move tires and tubes is expressly permitted by paragraph (c) of this section in a wide number of cases.

(3) The prohibition in this paragraph (a) applies to all new tires and tubes whether such new tires and tubes are at the date of this order already manufactured or whether such new tires and tubes are manufactured in the future.

*(b) Restriction on transfers from stocks to vehicles.*

(1) Except as provided in subparagraph (2) of this paragraph (b) no person who on December 11, 1941, or at any time thereafter was a retailer, distributor, wholesaler, or manufacturer of new tires or tubes may mount any new tire or tube on any vehicle owned, operated, or controlled by him or otherwise transfer such tire or tube to his own use unless such person possesses a certificate issued to him by a Board authorizing him to purchase or otherwise acquire such tire or tube for the vehicle upon which it is to be mounted. The instructions set forth in §§ 1315.705 and 1315.706 in regard to the certificate should be followed.

\* \* \*

*(c) Permitted transfers by certain persons.* (1) Except as provided in paragraph (b) of this section, any person who on December 11, 1941 was not a retailer, distributor, wholesaler, or manufacturer may transfer any new tire or tube which was owned and physically possessed by him prior to December 11, 1941, including the placing of such tire or tube upon the wheel or rim of any vehicle owned or operated by him, provided no change in ownership, possession, or control occurs.

\* \* \*



*Effective Dates.*

§ 1315.1199 *Effective dates of Tire Rationing Regulations.* (a) The Tire Rationing Regulations (§§ 1315.151 to 1315.904, inclusive) shall become effective this 30th day of December, 1941.

(b) These Revised Tire Rationing Regulations (§§ 1315.151 to 1315.1199, inclusive) shall become effective February 19, 1942, except that the provisions of § 1315.803 (b) shall become effective February 16, 1942.

(c) These Revised Tire Rationing Regulations (§§ 1315.151 to 1315.1199, inclusive) supersede the provisions of Sup. Order No. M-15-c, 6 F. R. 6792, December 30, 1941, as amended (7 F. R. 121, 350, 434, 474, January 6, 17, 21, 23, 1942) and the Tire Rationing Regulations, 7 F. R. 72, December 30, 1941, as amended (7 F. R. 257, January 14, 1942) in so far as they may be inconsistent therewith: *Provided, however,* That any violations occurring prior to the effective dates of these Revised Tire Rationing Regulations shall nevertheless be governed by the Sup. Order and Regulations, or amendments thereto, in effect at the time of said violations.

Issued this 11th day of February 1942.

LEON HENDERSON,  
*Administrator.*

(F. R. Doc. 42-1336; Filed, February 13, 1942; 5:18 p. m.)

No. 10607

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

---

LESTER ARTHUR CORSON,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

---

**TRANSCRIPT OF RECORD**

Upon Appeal from the District Court of the United States  
for the Southern District of California,  
Central Division

---

FILED

JUN 2 1937

PAUL P. O'BRIEN,  
CLERK



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**United States Circuit Court of Appeals**  
**FOR THE NINTH CIRCUIT**

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LESTER ARTHUR CORSON,

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italics; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in *italics* the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

MORRIS LAVINE,  
620 Bartlett Bldg.,  
Los Angeles, Calif.

For Appellee:

CHARLES H. CARR,  
United States Attorney,

JAMES M. CARTER,  
Assistant United States Attorney,  
600 U. S. Post Office and Court House Bldg.,  
Los Angeles 12, Calif. [1\*]

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\*Page numbering appearing at foot of page of original certified Transcript of Record.



At a stated term, to-wit: The September Term, A. D. 1943, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 27th day of September in the year of our Lord one thousand nine hundred and forty-three.

Present:

The Honorable: Campbell E. Beaumont, District Judge.  
No. 16,260—Crim.

United States of America,

Plaintiff,

vs.

Lester Arthur Corson.

Defendant,

On motion of Ray H. Kinnison, Esq., Assistant U. S. attorney, appearing for the Government, who presents an Information to the Court in this cause, it is ordered that the said Information be filed and that the bond of the defendant be, and it hereby is, fixed in the sum of \$3500.00. [2]

\$3500

This Information contains two (2) Counts charging Lester Arthur Corson with the violation of Ration Order 5C, issued pursuant to the provisions of the Second War Powers Act of 1942. Count One charges Lester Arthur Corson with illegal possession of gasoline ration coupons and Count two charges him with unlawfully selling and transferring gasoline ration coupons. (The maximum penalty on each Count consists of one (1) year imprisonment and/or a fine of Ten Thousand Dollars (\$10,000) or both, with no minimum penalty provided.)

Lester Arthur Corson [3]

In the District Court of the United States Southern  
District of California Central Division,

No. 16260-Crim.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LESTER ARTHUR CORSON,

Defendant.

INFORMATION.

Comes now Charles H. Carr, United States Attorney in and for the Southern District of California, Central Division, who for the United States and in its behalf, prosecutes in his own proper person, and with leave of Court first had and obtained, gives the Court here to understand and be informed as follows, to-wit:

Count One—That on or about the 2nd day of September, 1943, in the County of Los Angeles, State of California, in the District aforesaid and in the Central Division thereof, and within the jurisdiction of this Court, Lester Arthur Corson did knowingly, wilfully and unlawfully have in his possession eight hundred (800) Type "TT" gasoline ration coupons; that said Lester Arthur Corson was not the person, nor the agent of the person, to whom said gasoline ration coupons had been issued by a local War Price and Rationing Board, in violation of the provisions of Section 1394.8177 (c) of Ration Order 5C (7 Fed. Reg. 9135), as amended, issued pursuant to the provisions of the Second War Powers Act. (Pub. L. 507, 77th Cong. 2d Sess., March 27, 1942); contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

Count Two—That on or about the 2nd day of September, 1943, in the County of Los Angeles, State of California, in the District aforesaid, and in the Central Division thereof, and within the jurisdiction of this Court, Lester Arthur Corson did knowingly, wilfully and unlawfully assign and transfer to Edgar E. Thompson eight hundred (800) Type "TT" gasoline ration coupons in a manner other than in accordance with the provisions of Ration Order 5C (7 Fed. Reg. 9135), as amended, in violation of the provisions of Section 1394.8177 (b) of said Ration Order 5C, as amended, issued pursuant to the provisions of the Second War Powers Act, (Pub. L. [4] 507, 77th Cong. 2d Sess., March 27, 1942); contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

Whereupon, the said Attorney for the United States prays that due process of law may be awarded against the said defendant to make him answer the premises aforesaid.

CHARLES H. CARR.

United States Attorney

CHARLES H. VEALE

Assistant U. S. Attorney.

VERIFICATION.

State of California

County of Los Angeles

United States of America—ss

Jona Taylor, being first duly sworn, upon oath deposes and says:

That he is an employee of the United States Government, to-wit, an Investigator for the Office of Price Administration, an agency of the United States Government; that in the course of his duty as an Investigator for the Office of Price Administration he made an investigation of the matters set forth and mentioned in the foregoing Information against Lester Arthur Corson; that he has read the above and foregoing Information and knows the contents thereof and that the matters set forth therein are true of his own knowledge.

JONA TAYLOR.

Subscribed and sworn to this 24 day of Sept. 1943, before me Edmund L. Smith, Clerk, United States District Court. By Irwin Hames, Deputy Clerk.

[Endorsed]: Filed Sep. 27, 1943. [5]



[Title of District Court and Cause.]

MOTION TO QUASH AND DISMISS THE  
INFORMATION.

Comes now the defendant herein and moves to quash the information in each count thereof upon the following grounds, to-wit:

I.

The information and each count thereof fails to charge an offense against the laws of the United States.

II.

Section 1394.8177(c) of Ration Order 5C (7 Fed. Reg. 9135), inherently and as construed and applied in this case is unconstitutional in that it attempts to create a crime by executive order.

III.

Public Law 507, 77th Congressional Session, March 27, 1942, inherently and as construed and applied in this case is unconstitutional in that it attempts to create power for an executive officer to create crime.

IV.

Section 1394.8177(c) of Ration Order 5C (7 Fed. Reg. 9135) is void as being in contravention to the Fifth Amendment to the Constitution of the United States in that it denies this defendant due process of law guaranteed by that amendment.

V.

Public Law 507, 77th Congressional Session, March 27, 1942, is unconstitutional in that it is in violation of

the Fifth Amendment to the [6] Constitution of the United States.

VI.

Section 1394.8177(c) of Ration Order 5C is unconstitutional as not being within the prescribed limit of congressional enactment.

VII.

The Act and Order under it are violative of the Fifth Amendment to the Constitution of the United States in that they are too vague, indefinite and uncertain to constitute a public offense.

VIII.

The Act and Order under it are violative of the Fifth Amendment to the Constitution of the United States in that they are an attempt to delegate the authority to create a penal offense to an executive officer.

IX.

The Act and Order under it are violative of the Fifth Amendment to the Constitution of the United States in that they deny the free use of private property.

Wherefore, this defendant prays that the motion to quash and dismiss the information be granted.

Dated: October 9, 1943.

MORRIS LAVINE

Attorney for Defendant.

## POINTS AND AUTHORITIES.

United States Constitution, Articles I and II, creating a legislative and executive branch of the government.

Panama Refining Co. v. Ryan, 293 U. S. 388

United States v. Eaton, 144 U. S. 677, 36 L. Ed. 591

Donnelly v. United States, 276 U. S. 512, 72 L. Ed. 678

United States v. 11,150 Pounds of Butter, 195 Fed. 657

Schechter Poultry Corp. v. United States, 295 U. S. 495

Re Rahrer, 140 U. S. 545, 35 L. Ed. 572, 11 S. Ct. 865

Marshall Field & Co. v. Clark, 143 U. S. 649, 36 L. Ed. 294, 12 S. Ct. 495

Buttfield v. Stranahan, 192 U. S. 470, 48 L. Ed. 525, 24 S. Ct. 349 [7]

Interstate Commerce Comm. v. Goodrich Transit Co., 224 U. S. 194, 56 L. Ed. 729, 32 S. Ct. 436

Butte City Water Co. v. Baker, 196 U. S. 119, 49 L. Ed. 409, 25 S. Ct. 211

Knickerbocker Ice Co. v. Stewart, 253 U. S. 156, 64 L. Ed. 837, 40 S. Ct. 438, 11 ALR 1145, 20 N. C. C. A. 635

United States v. Eaton, 144 U. S. 677, 36 L. Ed. 591, 12 S. Ct. 764

Interstate Commerce Comm. v. Brimson, 155 U. S. 4, 39 L. Ed. 49, 15 S. Ct. 19

United States v. Maid (D. C.) 116 Fed. 650

United States v. Grimaud, 220 U. S. 506, 55 L. Ed. 563, 31 S. Ct. 480

Todd v. United States, 158 U. S. 282, 39 L. Ed. 982, 15 S. Ct. 887

United States v. United Verde Copper Co., 195 U. S. 207,  
25 S. Ct. 222

Williamson v. United States, 207 U. S. 425, 52 L. Ed.  
278, 28 S. Ct. 163

United States v. George, 228 U. S. 15, 57 L. Ed. 712,  
33 S. Ct. 412

Connally v. General Constr. Co., 269 U. S. 385, 70 L. Ed.  
322, 46 S. Ct. Rep. 126

United States v. Noveck, 271 U. S. 201, 70 L. Ed. 904,  
46 S. Ct. Rep. 476

United States v. Katz, 271 U. S. 354, 70 L. Ed. 986, 46  
S. Ct. Rep. 513

United States v. Reese, 92 U. S. 214, 23 L. Ed. 563

First Nat. Bank v. United States, 46 L. R. A. (N. S.)  
1139, 124 C. C. A. 256, 206 F. 374

United States v. Wiltberger, 5 Wheat. 76, 5 L. Ed. 37

McCord v. State, 2 Okla. Crim. Rep. 214, 101 Pac. 280,  
25 R. C. L. 1083

Received copy of the within Notice of Motion this 9th  
day of October, 1943.

JAMES M. CARTER

Assistant U. S. Attorney NA

[Endorsed]: Filed Oct. 9, 1943. [8]



[Title of District Court and Cause.]

DEMURRER TO INFORMATION.

Comes now the defendant herein and demurs to the information on the following grounds, to-wit:

I.

The information and each count thereof fails to charge an offense against the laws of the United States:

II.

Section 1394.8177(c) of Ration Order 5C (7 Fed. Reg. 9135), inherently and as construed and applied in this case is unconstitutional in that it attempts to create a crime by executive order.

III.

Public Law 507, 77th Congressional Session, March 27, 1942, inherently and as construed and applied in this case is unconstitutional in that it attempts to create power for an executive officer to create crime.

IV.

Section 1394.8177(c) of Ration Order 5C (7 Fed. Reg. 9135) is void as being in contravention to the Fifth Amendment to the Constitution of the United States in that it denies this defendant due process of law guaranteed by that amendment.

V.

Public Law 507, 77th Congressional Session, March 27, 1942, is unconstitutional in that it is in violation of the Fifth Amendment to the Constitution of the United States. [9]

VI.

Section 1394.8177(c) of Ration Order 5C is unconstitutional as not being within the prescribed limit of congressional enactment.

VII.

The Act and Order under it are violative of the Fifth Amendment to the Constitution of the United States in that they are too vague, indefinite and uncertain to constitute a public offense.

VIII.

The Act and Order under it are violative of the Fifth Amendment to the Constitution of the United States in that they are an attempt to delegate the authority to create a penal offense to an executive officer.

IX.

The Act and Order under it are violative of the Fifth Amendment to the Constitution of the United States in that they deny the free use of private property.

Wherefore, this defendant prays that this demurrer be sustained and that he be discharged and go forth in accordance with due process of law.

Dated: October 9, 1943.

MORRIS LAVINE

Attorney for Defendant.

POINTS AND AUTHORITIES.

United States Constitution, Articles I and II, creating a legislative and executive branch of the government.

Panama Refining Co. v. Ryan, 293 U. S. 388

United States v. Eaton, 144 U. S. 677, 36 L. Ed. 591

Donnelly v. United States, 276 U. S. 512, 72 L. Ed. 678

United States v. 11,150 Pounds of Butter, 195 Fed. 657

Schechter Poultry Corp. v. United States, 295 U. S. 495

Re Rahrer, 140 U. S. 545, 35 L. Ed. 572, 11 S. Ct. 865

Marshall Field & Co. v. Clark, 143 U. S. 649, 36 L. Ed.

294, 12 S. Ct. 495

- Buttfield v. Stranahan, 192 U. S. 470, 48 L. Ed. 525, 24 S. Ct. 349 [10]
- Interstate Commerce Comm. v. Goodrich Transit Co., 224 U. S. 194, 56 L. Ed. 729, 32 S. Ct. 436
- Butte City Water Co. v. Baker, 196 U. S. 119, 49 L. Ed. 409, 25 S. Ct. 211
- Knickerbocker Ice Co. v. Stewart, 253 U. S. 156, 64 L. Ed. 837, 40 S. Ct. 438, 11 ALR 1145, 20 N. C. C. A. 635
- United States v. Eaton, 144 U. S. 677, 36 L. Ed. 591, 12 S. Ct. 764
- Interstate Commerce Comm. v. Brimson, 155 U. S. 4, 39 L. Ed. 49, 15 S. Ct. 19
- United States v. Maid (D. C.) 116 Fed. 650
- United States v. Grimaud, 220 U. S. 506, 55 L. Ed. 563, 31 S. Ct. 480
- Todd v. United States, 158 U. S. 282, 39 L. Ed. 982, 15 S. Ct. 887
- United States v. United Verde Copper Co., 196 U. S. 207, 25 S. Ct. 222
- Williamson v. United States, 207 U. S. 425, 52 L. Ed. 278, 28 S. Ct. 163
- United States v. George, 228 U. S. 15, 57 L. Ed. 712, 33 S. Ct. 412
- Connally v. General Constr. Co., 269 U. S. 385, 70 L. Ed. 322, 46 S. Ct. Rep. 126
- United States v. Noveck, 271 U. S. 201, 70 L. Ed. 904, 46 S. Ct. Rep. 476
- United States v. Katz, 271 U. S. 354, 70 L. Ed. 986, 46 S. Ct. Rep. 513
- United States v. Reese, 92 U. S. 214, 23 L. Ed. 563
- First Nat. Bank v. United States, 46 L. R. A. (N. S.) 1139, 124 C. C. A. 256, 206 F. 374

United States v. Wiltberger, 5 Wheat. 76, 5 L. Ed. 37

McCord v. State, 2 Okla. Crim. Rep. 214, 101 Pac. 280,  
25 R. C. L. 1083

Received copy of the within Demurrer to Information  
this 9th day of October, 1943.

JAMES M. CARTER

Assistant U. S. Attorney, NA

[Endorsed]: Filed Oct. 9, 1943. [11]

---

At a stated term, to-wit: The September Term, A. D.  
1943, of the District Court of the United States of Amer-  
ica, within and for the Central Division of the Southern  
District of California, held at the Court Room thereof,  
in the City of Los Angeles on Monday the 11th day of  
October in the year of our Lord one thousand nine hun-  
dred and forty-three.

Present:

The Honorable: Ben Harrison, District Judge.

No. 16,260-Crim.

United States of America,

Plaintiff,

vs.

Lester Arthur Corson,

Defendant.

This cause coming on for hearing on motion of defend-  
ant to quash and dismiss; hearing on demurrer, and for  
arraignment and plea of the defendant;; Ray H. Kinnison,  
Esq., Assistant U. S. Attorney, appearing for the Gov-  
ernment; Morris Lavine, Esq., appearing as counsel for  
the defendant; G. M. Fox, Court Reporter, being present  
and reporting the proceedings; the defendant, Lester Ar-



thur Corson being present in Court on bond, now states his true name to be as charged in the Information and waives the reading of the Information.

Attorney Lavine makes a statement of the motion to quash and demurrer, and it is ordered that the Government be, and it is allowed three days to file points and authorities and the motion and demurrer to stand submitted.

It is further ordered that this cause be, and it hereby is, continued to October 18, 1943, at 9:30 A.M. for plea.  
[12]

---

At a stated term, to-wit: The September Term, A. D. 1943, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Saturday the 16th day of October in the year of our Lord one thousand nine hundred and forty-three.

Present:

The Honorable: Ben Harrison, District Judge.

No. 16,260-Crim.

United States of America,

Plaintiff,

vs.

Lester Arthur Corson,

Defendant.

This cause coming before the Court; Angus McEachen, Esq., Assistant U. S. Attorney, appearing for the Government; Morris Lavine, Esq., appearing as counsel for defendant; James Marquardt, Court Reporter, being present

and reporting the proceedings; the defendant Lester Arthur Corson being absent:

The Court makes a statement and orders the motion of defendant to quash denied and the demurrer to the Information overruled; exceptions allowed and noted for defendant.

Time for plea is now set for October 18, 1943, at 9:30 A.M. [13]

---

At a stated term, to-wit: The September Term, A. D. 1943, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 18th day of October in the year of our Lord one thousand nine hundred and forty-three.

Present:

The Honorable: Ben Harrison, District Judge.

No. 16,260-Crim.

United States of America,

Plaintiff,

vs.

Lester Arthur Corson,

Defendant.

This cause coming on for plea of the defendant Lester Arthur Corson; Ray H. Kennison, Esq., Assistant U. S. Attorney, appearing for the Government; Morris Lavine, Esq., appearing as counsel for the defendant; Virginia Pickering, Court Reporter, being present and reporting the proceedings; the defendant being present in Court on bond:

The said defendant's counsel renews motion and moves to set aside the Information on the ground that it was not filed in accordance with Section 591 USCA and 995 Penal Code of the State of California, and on the ground that there was no reasonable and probable cause; also that the fifth Amendment to the Constitution of the United States was violated.

It is ordered that the motion be, and it hereby is, denied, and an exception allowed to the defendant.

The defendant now enters plea of not guilty to each of the two counts of the Information, and it is ordered that this cause be, and it hereby is, set for trial for November 2, 1943, at 9:30 A.M. [14]

---

At a stated term: The September Term, A. D. 1943, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Friday the 5th day of November in the year of our Lord one thousand nine hundred and forty-three.

Present:

The Honorable: Leon R. Yankwich, District Judge.

No. 16,260-Crim.

United States of America,

Plaintiff,

vs.

Lester Arthur Corson,

Defendant.

This cause coming on for trial; James M. Carter, Esq., Assistant U. S. Attorney, appearing for the Government; Morris Lavine, Esq., appearing as counsel for the defend-

ant; Eloise Moeller, Court Reporter, being present and reporting the proceedings; the defendant, Lester Arthur Corson, being present;

Attorney Lavine renews objections to jurisdiction and on constitutional grounds. The objections are overruled, as heretofore ruled on, and an exception noted for the defendant.

Both sides answering ready, it is ordered that a jury be impaneled for the trial of this cause; whereupon, the Clerk draws the names of the following twelve jurors, who take their seats in the jury box:

- |                       |                        |
|-----------------------|------------------------|
| 1. David Fisher       | 7. Clyde H. Potter     |
| 2. A. O. Imbler       | 8. R. B. Ottun         |
| 3. Fred S. Andrews    | 9. Walter L. Myron     |
| 4. W. Sumner Brown    | 10. R. S. Wimmer       |
| 5. Chas. W. Henderson | 11. Harold Bridges     |
| 6. Thos. W. Meredith  | 12. Chauncey H. Dekker |

The jurors are examined for cause by the Court and by respective counsel, and passed for cause.

The Government passes peremptory challenge, and R. S. Wimmer is excused by the defendant on 1st peremptory challenge. It is ordered that one more name be drawn and the name of Geo. A. Blair is drawn; examined by the Court and respective counsel for cause, and passed for cause.

The Government passes peremptory challenge, and Geo. A. Blair is excused by the defendant on 2nd peremptory challenge. It is ordered that one more name be drawn, and the name of Conrad J. Fuglaar is drawn; examined for cause by the Court and respective counsel and passed for cause. [15]



The Government passes peremptory challenge, and W. Sumner Brown is excused by the defendant on 3rd peremptory challenge. It is ordered that one more name be drawn, and the name of A. W. Pessell is drawn; examined for cause by the Court and by Attorney Lavine, and passed for cause, and there being no further peremptory challenges, the jurors now in the box are accepted and sworn as the jury for the trial of this cause, viz.:

### THE JURY

- |                       |                        |
|-----------------------|------------------------|
| 1. David Fisher       | 7. Clyde H. Potter     |
| 2. A. O. Imbler       | 8. R. B. Ottun         |
| 3. Fred S. Andrews    | 9. Walter L. Myron     |
| 4. A. W. Pessell      | 10. Conrad J. Fuglaar  |
| 5. Chas. W. Henderson | 11. Harold Bridges     |
| 6. Thos. W. Meredith  | 12. Chauncey H. Dekker |

Attorney Carter makes opening statement to the jury for the Government. Attorney Lavine makes opening statement to the jury for the defendant. The reading of the Information is waived.

At 11 A.M. the Court admonishes the jury that during the progress of this trial and the recesses therein, they are not to speak to anyone or permit anyone to speak to them about this cause, or any matter or thing therewith connected; that until said cause is finally submitted to them for their deliberation, under the instructions of the Court, they are not to speak to each other about this cause, or any matter or thing therewith connected, or form or express any opinion concerning the merits of the trial until it is finally submitted to them, and declares a recess.

Court reconvenes at 11:20 A.M.; all present as before; the defendant and jury are present.

The defendant demands election by plaintiff between counts 1 and 2. The demand is denied without prejudice to renewing at the close of the Government's case.

John E. Foster is called, sworn, and testifies for the Government, and U. S. Exhibits Nos. 1, 2, 3 and 4 are marked for identification.

Said witness Foster testifies further.

At 12:30 P.M. the Court reminds the jury of the admonition heretofore given, and recesses to 2 P.M.

Court reconvenes at 2:07 P.M.; all present as before; the defendant and jury are present.

Witness Foster resumes the stand and testifies further.

Jona H. Taylor is called, sworn, and testifies for the Government.

U. S. Exhibits 1, 2, 3 and 4 for identification are offered and [16] admitted into evidence, and are so marked.

The Court reminds the jury of the admonition heretofore given and excuses the jury. In the absence of the jury, Attorney Lavine for the defendant moves for directed verdict of not guilty and to strike testimony of Witnesses Foster and Taylor. The Court denies the motions and exceptions are allowed to the defendant.

Attorney Lavine renews motion that the Government elect between counts 1 and 2. The Court holds the Government must elect, and the Government elects to stand on count 2, and count 1 is ordered dismissed.

At 3:25 P.M. the jury returns into Court; all present as before; the defendant and jury are present.

The file in case No. 16,220-Crim. of the files of this Court is received by reference as defendant's exhibit, and certain portions thereof are read to the jury.

Lester Arthur Corson is called, sworn, and testifies in his own behalf. U. S. Exhibit No. 5 is marked for identification, and same is then offered and received in evidence and marked U. S. Exhibit No. 5. Said witness Corson testifies further. The defendant rests. Defendant moves for directed verdict. The motion is denied.

At 4 P.M. Attorney Carter argues to the jury for the Government. At 4:12 P.M. Attorney Lavine argues to the jury for the defendant. At 4:30 P.M. Attorney Carter argues to the jury in rebuttal for the Government. At 4:37 P.M. the Court instructs the jury on the law of the case. At 4:50 P.M. Attorney Lavine excepts to certain portions of the charge.

At 4:55 P.M. bailiffs Turner and Fuller are sworn as the officers to care for the jury, and the jury retires to the jury room to deliberate upon its verdict. At 5:55 P.M. the jury returns into Court; all present as before; the defendant and jury are present, and in response to the Court's inquiry, the foreman states that the jury has agreed upon a verdict; whereupon, the verdict is presented and read. The jury is polled, and each juror states that the verdict as presented and read is his verdict; whereupon, pursuant to the Court's order, the verdict is filed and entered, the verdict being as follows: \* \* \* \* \*

The defendant is remanded to the custody of the U. S. Marshal and his bond exonerated, and this cause is ordered continued to Tuesday, November 9, 1943, at 2 P.M. for sentence. [17]

[Title of District Court and Cause.]

VERDICT.

We the jury in the above entitled cause find the defendant Lester Arthur Corson guilty as charged in the second count of the information.

RALPH B. OTTUN,  
Foreman of the Jury.

Los Angeles, California, November 5, 1943.

[Endorsed]: Filed Nov. 5, 1943. [18]

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[Title of District Court and Cause.]

MOTION FOR NEW TRIAL.

Comes now the defendant herein and moves for a new trial upon the following grounds, to-wit:

I.

The verdict is contrary to the law and the evidence.

II.

The trial was had upon an information without any reasonable or probable cause having been shown therefor, in accordance with the provisions of Section 591 United States Codes Annotated.

III.

The information fails to charge an offense against the laws of the United States.

IV.

Section 1394.8177(c) of Ration Order 5C (Fed. Reg. 9135), inherently and as construed and applied in this case is unconstitutional in that it attempts to create a crime by executive order.



## V.

Public Law 507, 77th Cong. Sess., March 27, 1942, inherently and as construed and applied in this case is unconstitutional in that it attempts to create power for an executive officer to create a crime.

## VI.

Section 1394.8177(c) of Ration Order 5C is void as being in contravention to the Fifth Amendment to the Constitution of the United States in that it denies this defendant due process of law guaranteed by that amendment. [19]

## VII.

Public Law 507, 77th Cong. Sess., March 27, 1942, is unconstitutional in that it is in violation of the Fifth Amendment to the Constitution of the United States.

## VIII.

Section 1394.8177(c) of Ration Order 5C is unconstitutional as not being within the prescribed limit of congressional enactment.

## IX.

The Act and Order under it are violative of the Fifth Amendment to the Constitution of the United States in that they are too vague, indefinite and uncertain to constitute a public offense.

## X.

The Act and Order under it are violative of the Fifth Amendment to the Constitution of the United States in that they are an attempt to delegate the authority to create a penal offense to an executive officer.

XI.

The Act and Order under it are violative of the Fifth Amendment to the United States Constitution in that they deny the

XII.

The Court erred in its rulings in the trial of the case.

XIII.

The Court erred in instructions given, and particularly in giving the instruction that a crime exists through violation of an executive order.

XIV.

There was no reasonable or probable cause for filing the information. The proceedings violated Section 591, United States Codes Annotated, and Section 995 of the Penal Code of California.

XV.

Ration Order 5C has to date been amended 82 times. The amendment or change of a regulation repeals the regulation.

(United States v. Hark, 49 Fed. Supp. 95, 97.) [20]

XVI.

The information was sworn to by a person not such an officer of the United States as is empowered to make arrest under the laws of the United States.

Dated: November 8, 1943.

MORRIS LAVINE

Attorney for Defendant.

## POINTS AND AUTHORITIES.

United States Constitution, Articles I and II, creating a legislative and executive branch of the government.

Panama Refining Co. v. Ryan, 293 U. S. 388

United States v. Eaton, 144 U. S. 677, 36 L. Ed. 591

Donnelly v. United States, 276 U. S. 512, 72 L. Ed. 678

United States v. 11,150 Pounds of Butter, 195 Fed. 657

Schechter Poultry Corp. v. United States, 295 U. S. 496

Re Rehrer, 140 U. S. 545, 35 L. Ed. 572, 11 S. Ct. 865

Marshall Field & Co. v. Clark, 143 U. S. 649, 36 L. Ed. 294, 12 S. Ct. 495

Buttfield v. Stranahan, 192 U. S. 470, 48 L. Ed. 525, 24 S. Ct. 349

Interstate Commerce Comm. v. Goodrich Transit Co., 224 U. S. 194, 36 L. Ed. 729, 32 S. Ct. 436

Butte City Water Co. v. Baker, 196 U. S. 119, 49 L. Ed. 409, 25 S. Ct. 211

Knickerbocker Ice Co. v. Stewart, 253 U. S. 156, 64 L. Ed. 837, 40 S. Ct. 438, 11 ALR 1145, 20 N. C. C. A. 635

United States v. Maid (D. C.) 116 Fed. 650

Interstate Commerce Comm. v. Brimson, 155 U. S. 4, 39 L. Ed. 49, 15 S. Ct. 19

United States v. Grimaud, 220 U. S. 506, 55 L. Ed. 563, 31 S. Ct. 480

Todd v. United States, 158 U. S. 282, 39 L. Ed. 982, 15 S. Ct. 887

United States v. United Verde Copper Co., 196 U. S. 207,  
25 S. Ct. 222

Williamson v. United States, 207 U. S. 425, 52 L. Ed.  
278, 25 S. Ct. 163

United States v. George, 228 U. S. 15, 57 L. Ed. 712,  
33 S. Ct. 412

Connelly v. General Constr. Co., 269 U. S. 385, 70 L. Ed.  
322, 46 S. Ct. Rep. 126

United States v. Noveck, 271 U. S. 201, 70 L. Ed. 904,  
46 S. Ct. 476

United States v. Katz, 271 U. S. 354, 70 L. Ed. 986, 46  
S. Ct. Rep. 513 [21]

United States v. Reese, 92 U. S. 214, 23 L. Ed. 563

United States v. Wiltberger, 5 Wheat. 76, 5 L. Ed. 37

McCord v. State, 2 Okla. Crim. Rep. 214, 101 Pac. 280,  
25 R. C. L. 1083

United States v. Patterson, 37 L. Ed. 999

United States v. Ewing, 35 L. Ed. 388

United States v. Quaritius, 267 Fed. 227

Section 951 United States Codes Annotated

Received copy of the within this 8 day of Nov. 1943.

CHARLES H. CARR

U. S. Atty.

Attorney for Plaintiff,

By James M. Carter,

Asst U. S. Atty

[Endorsed]: Filed Nov. 8, 1943. [22]



[Title of District Court and Cause.]

### MOTION IN ARREST OF JUDGMENT.

Comes now the defendant herein and moves in arrest of judgment upon the following grounds:

#### I.

The verdict is contrary to the law and the evidence.

#### II.

The trial was had upon an information without any reasonable or probable cause having been shown therefor, in accordance with the provisions of Section 591 United States Codes Annotated.

#### III.

The information fails to charge an offense against the laws of the United States.

#### IV.

Section 1394.8177(c) of Ration Order 5C (Fed. Reg. 9135), inherently and as construed and applied in this case, is unconstitutional in that it attempts to create a crime by executive order.

#### V.

Public Law 507, 77th Cong. Sess., March 27, 1942, inherently and as construed and applied in this case, is unconstitutional in that it attempts to create power for an executive officer to create a crime.

#### VI.

Section 1394.8177(c) of Ration Order 5C is void as being in contravention to the Fifth Amendment to the Constitution of the United States in that it denies this defendant due process of law guaranteed by that [23] amendment.

## VII.

Public Law 507, 77th Cong. Sess., March 27, 1942, is unconstitutional in that it is in violation of the Fifth Amendment to the Constitution of the United States.

## VIII.

Section 1394.8177(c) of Ration Order 5C is unconstitutional as not being within the prescribed limit of congressional enactment.

## IX.

The Act and Order under it are violative of the Fifth Amendment to the Constitution of the United States in that they are too vague, indefinite and uncertain to constitute a public offense.

## X.

The Act and Order under it are violative of the Fifth Amendment to the Constitution of the United States in that they are an attempt to delegate the authority to create a penal offense to an executive officer.

## XI.

The Act and Order under it are violative of the Fifth Amendment to the United States Constitution in that they deny the free use of private property.

## XII.

The Court erred in its rulings in the trial of the case.

## XIII.

The Court erred in instructions given, and particularly in giving the instruction that a crime exists through violation of an executive order.

## XIV.

There was no reasonable or probable cause for filing the information. The proceedings violated Section 591, United States Codes Annotated, and Section 995 of the Penal Code of California.

## XV.

Ration Order 5C has to date been amended 82 times. The amendment [24] or change of a regulation repeals the regulation. (United States v. Hark, 49 Fed. Supp. 95, 97.)

## XVI.

The information was sworn to by a person not such an officer of the United States as is empowered to make arrests under the laws of the United States.

Dated: November 8, 1943.

MORRIS LAVINE

Attorney for Defendant.

## POINTS AND AUTHORITIES.

United States Constitution, Articles I and II, creating a legislative and executive branch of the government.

Panama Refining Co. v. Ryan, 293 U. S. 388

United States v. Eaton, 144 U. S. 677, 36 L. Ed. 591

Donnelly v. United States, 276 U. S. 512, 72 L. Ed. 678

United States v. 11,150 Pounds of Butter, 195 Fed. 657

Schechter Poultry Corp. v. United States, 295 U. S. 495

Re Rahrer, 140 U. S. 545, 35 L. Ed. 572, 11 S. Ct. 865

Marshall Field & Co. v. Clark, 143 U. S. 649, 36 L. Ed. 294, 12 S. Ct. 495

Buttfield v. Stranahan, 192 U. S. 470, 48 L. Ed. 525, 24 S. Ct. 349

Interstate Commerce Comm. v. Goodrich Transit Co., 224 U. S. 194, 36 L. Ed. 729, 32 S. Ct. 436

Butte City Water Co. v. Baker, 196 U. S. 119, 49 L. Ed. 409, 25 S. Ct. 211

Knickerbocker Ice Co. v. Stewart, 253 U. S. 156, 64 L. Ed. 837, 40 S. Ct. 438, 11 ALR 1145, 20 N. C. C. A. 635

United States v. Maid (D. C.) 116 Fed. 650

- Interstate Commerce Comm. v. Brimson, 155 U. S. 4, 39 L. Ed. 49, 15 S. Ct. 19
- United States v. Grimaud, 220 U. S. 506, 55 L. Ed. 563, 31 S. Ct. 480
- Todd v. United States, 158 U. S. 282, 39 L. Ed. 982, 15 S. Ct. 887
- United States v. United Verde Copper Co., 196 U. S. 207, 25 S. Ct. 222
- Williamson v. United States, 207 U. S. 425, 52 L. Ed. 278, 25 S. Ct. 163
- United States v. George, 228 U. S. 15, 57 L. Ed. 712, 33 S. Ct. 412
- Connelly v. General Constr. Co., 269 U. S. 385, 70 L. Ed. 322, 46 S. Ct. Rep. 126
- United States v. Noveck, 271 U. S. 201, 70 L. Ed. 904, 46 S. Ct. 476 [25]
- United States v. Katz, 271 U. S. 354, 70 L. Ed. 986, 46 S. Ct. Rep. 513
- United States v. Reese, 92 U. S. 214, 23 L. Ed. 563
- United States v. Wiltberger, 5 Wheat. 76, 5 L. Ed. 37
- McCord v. State, 2 Okla. Crim. Rep. 214, 101 Pac. 280, 25 R.C.L. 1083
- United States v. Patterson, 37 L. Ed. 999
- United States v. Ewing, 35 L. Ed. 388
- United States v. Quaritius, 267 Fed. 227
- Section 951 United States Codes Annotated

Received copy of the within this 8 day of Nov. 1943.

CHARLES H. CARR

U. S. Atty.,

Attorney for Plaintiff.

By James M. Carter

Asst. U. S. Atty.

[Endorsed]: Filed Nov. 8, 1943. [26]



At a stated term, to-wit: The September Term, A. D. 1943, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Tuesday the 9th day of November in the year of our Lord one thousand nine hundred and forty-three.

Present:

The Honorable Leon R. Yankwich, District Judge.  
No. 16,260—Crim.

United States of America,

Plaintiff,

vs.

Lester Arthur Corson,

Defendant.

This cause coming on for hearing (1) motion for new trial; (2) motion in arrest of judgment; and (3) sentence on count 2 of defendant Lester Arthur Corson; James M. Carter, Assistant U. S. Attorney, appearing as counsel for the Government; Morris Lavine, Esq., appearing as counsel for the said defendant, who is present; and Henry A. Dewing, Court Reporter, being present and reporting the proceedings:

Attorney Lavine presents motions, Attorney Carter replies, and it is ordered that the said motions be, and they hereby are, denied and exceptions noted.

Attorney Carter makes a statement of the previous record of the defendant and recommends maximum sentence and fine. Attorney Lavine makes a statement in behalf of the defendant. And, no legal cause appearing why judgment should not be pronounced, the Court now pronounces sentence as follows: \* \* \* \* [27]

JUDGMENT AND COMMITMENT

District Court of the United States, Southern District  
of California, Central Division.

No. 16260, Criminal information in 2 counts for violation of Ration Order 5C. issued pursuant to the provisions of 2nd War Powers Act of 1942.

United States

v.

Lester Arthur Corson

On this 9th day of November, 1943, came the United States Attorney, and the defendant, Lester Arthur Corson, appearing in proper person, and with counsel and,

The defendant having been convicted on verdict of the jury of the offense charged in the 2nd count of the information in the above-entitled cause, to-wit: on or about September 2, 1943, in the County of Los Angeles, California, assign and transfer 800 type "TT" Gasoline Coupons in a manner other than in accord with the provisions of Ration Order 5C, (7 Fed. Reg. 9135) as amended in viol of provisions of Section 1394.8177(b), of said Ration Order 5C, as Amended, issued pursuant to 2nd War Powers Act. Pub. L. 507, 77th Cong., 2nd Session, 3/27/42, and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of one year in an institution of the jail type.

It Is Further Ordered that the first count of the information be dismissed.

It Is Furthered Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

(Signed) LEON R. YANKWICH

Leon R. Yankwich

United States District Judge.

[Endorsed]: Filed this 9th day of November, 1943. [28]  
[Title of District Court and Cause.]

NOTICE OF APPEAL.

Name and address of appellant: Lester Arthur Corson, County Jail, Los Angeles, Calif.

Name and address of appellant's attorney: Morris Lavine, 620 Bartlett Building, Los Angeles, Calif.

Offense: Viol. provisions of Sec. 1394.8177(b) of Ration Order 5C as amended, issued pursuant to provisions of Second War Power Act Pub. Law 507, 77th Cong. Sess., March 27, 1942.

Date of judgment: November 9, 1943.

Brief description of judgment and sentence: one year in jail.

Name of prison where now confined if not on bail: Los Angeles County Jail, Los Angeles, Calif.

I, the above-named appellant, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment above mentioned on the grounds set forth below:

Pursuant to Rule V, I hereby serve notice that I do not elect to enter upon the service of the sentence pending appeal.

Dated: November 9, 1943.

LESTER ARTHUR CORSON

Appellant.

MORRIS LAVINE

Attorney for Appellant. [29]

Grounds of Appeal:

1. The evidence is insufficient to support the verdict; the verdict is contrary to the law and the evidence.

2. The Court should have granted the motion for a directed verdict at the close of the Government's case and also at the close of the entire case.



3. The information fails to state a public offense against the laws of the United States.

4. There is no reasonable or probable cause upon which the information was based.

5. The Court erred in rulings made throughout the trial of the case and at the close of the case, and in its order over-ruling the motion for a new trial and the motion in arrest of judgment.

6. The Court erred in instructions given, particularly on the question of violation of law created by executive order.

7. The Court erred in ruling that Section 1394.8177 (c) of Ration Order 5C, inherently and as construed and applied in this case is constitutional when it is an attempt to create a crime by executive order.

8. The Court erred in upholding the constitutionality of the Act.

9. The Court erred in holding that the Act and Orders pursuant thereto are not violative of the Fifth Amendment to the Constitution of the United States.

MORRIS LAVINE

Attorney for Appellant.

Received copy of the within this 9 day of Nov., 1943.  
Charles H. Carr, U. S. Atty., Attorney for Plaintiff, by  
James M. Carter, Asst. U. S. Atty.

[Endorsed]: Filed Nov. 9, 1943. [30]

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[Title of District Court and Cause.]

BAIL BOND ON APPEAL.

Kow All Men by These Presents:

That I, Lester Arthur Corson, of the city of Los An-

geles, California, as principal and the National Automobile Insurance Company, a corporation, as surety, are jointly and severally held firmly bound unto the United States of America in the sum of Five Thousand Dollars, for the payment of which said sum we and each of us bind ourselves, our heirs, executors, administrators and assigns.

The condition of the foregoing obligation is as follows:

Whereas, *later*, to-wit, on the 9th day of November, 1943, at a term of the District Court of the United States, in and for the Southern District of California, Central Division, in an action pending in said court in which the United States of America was plaintiff and Lester Arthur Corson was defendant, a Judgment and sentence was made, given, rendered and entered against the said Lester Arthur Corson, in the above entitled action, whereas he was convicted as charged:

In count 2, of information number 16260 criminal and sentenced to one year in a jail type of institution.

Whereas, in said judgment and sentence, so made, given, rendered and entered against said Lester Arthur Corson, he was by said judgment sentenced to one year in a jail type of institution.

Whereas, the said Lester Arthur Corson has filed a notice of appeal from the said conviction and from the said judgment and sentence, appealing to the United States Circuit Court of Appeals for the Ninth Circuit; and

Whereas, the said Lester Arthur Corson has been admitted to bail pending the decision upon said appeal, in the sum of \$5000.00. [31]

Now, Therefore, the condition of this obligation are such that if said Lester Arthur Corson shall appear in

person, or by his attorney, in the United States Circuit Court of Appeals for the Ninth Circuit on such day or days as may be appointed for the hearing of said cause in said court and prosecute his appeal; and if the said Lester Arthur Corson shall abide by and obey all orders made by the said United States Circuit Court of Appeals for the Ninth Circuit and if said Lester Arthur Corson shall surrender himself in execution of said judgment and sentence, if the judgment and sentence be affirmed by the said United States Circuit Court of Appeals for the Ninth Circuit; and if the said Lester Arthur Corson will appear for trial in the District Court of the United States, in and for the Southern District of California, Central Division, on such day or days as may be appointed for retrial by said District Court, if the said judgment and sentence against him be reversed.

Then this obligation shall be null and void; otherwise to remain in full force and effect.

It is further agreed that the provisions of Rule 13 of the District Court for summary judgment against sureties are deemed a condition of this recognizance.

LESTER ARTHUR CORSON

Principal

2666 Rutherford Dr., Los Angeles

Address

NATIONAL AUTOMOBILE

INSURANCE CO.

By Ed Groves

(Seal)

Attorney-in-Fact.

State of California,

County of Los Angeles—ss.

On this 9th day of November in the year 1943, before

me, James A. Mew, a Notary Public in and for said County and State, personally appeared Ed Groves known to me to be the person whose name is subscribed to the within instrument as the Attorney-in-fact of the National Automobile Insurance Company, and acknowledged to me that he subscribed the name of the National Automobile Insurance [32] Company thereto as principal, and his own name as Attorney-in-fact.

(Seal)

JAMES A. MEW

Notary Public in and for said County and State.

My Commission Expires August 31, 1943.

Approves as to Form.

CHARLES H. CARR

United States Attorney.

By James M. Carter

Asst. United States Attorney.

I hereby certify that I have examined the within bond and that in my opinion the form hereof is correct and surety thereon is qualified.

MORRIS LAVINE

Attorney for Defendant and Appellant.

The foregoing bond is approved this 9th day of November, 1943.

LEON R. YANKWICH

United States District Judge.

This Bond Shall be Void if in Excess of \$5000.00.

This Bond Shall be Void if Issued After Nov. 30, 1943.

[Endorsed]: Filed Nov. 9, 1943. [33]



[Title of Circuit Court and Cause.]

AFFIDAVIT FOR ENLARGEMENT OF TIME.

State of California,

County of Los Angeles—ss.

Morris Lavine, being first duly sworn, deposes and says:

That he is the attorney for the appellant herein; that he has duly and regularly filed Notice of Appeal and that the time within which to lodge the proposed bill of exceptions under the rules would be December 9, 1943.

That affiant has taken up the matter of getting the transcript of the record prepared with the official court reporter, and has been informed that the reporter who transcribed the proceedings is out of the city and will not return for a period of about two weeks.

That in order properly to prepare the said bill of exceptions affiant will require additional time following the transcription of the same to study the record and prepare said bill of exceptions and assignments of error.

Wherefore, affiant prays that this Honorable Court enlarge the time within which appellant may file the proposed bill of exceptions and assignment of errors to and including March 15, 1944.

MORRIS LAVINE

Subscribed and sworn to before me this 1st day of December, 1943.

(Seal)

Zoa L. Zacche

Notary Public in and for said County and State.

Received copy of the within affidavit and order this 2nd day of December, 1943. United States Attorney, by James M. Carter, Asst. U. S. Atty. HM

[Endorsed]: Filed Dec. 2, 1943. [34]

[Title of Circuit Court and Cause.]

ORDER ENLARGING TIME.

Upon reading the affidavit of Morris Lavine, and good cause appearing therefor,

It Is Hereby Ordered that the appellant have to and including March 15, 1944, within which to file his proposed bill of exceptions with the Clerk of the United States District Court, together with his assignment of errors, and that the Court have such time as it may require to sign and settle the same.

Dated: December 1, 1943.

LEON R. YANKWICH

Judge

[Endorsed]: Filed Dec. 2, 1943. [35]

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[Title of District Court and Cause.]

To the Clerk of the United States District Court, Southern District of California, Central Division:

You will please prepare the following record in the above-entitled cause for the Ninth Circuit Court of Appeals:

1. Information.
2. Motion to Quash and Dismiss the Information.

3. Minutes and Rulings on Motion to Quash and Dismiss the Information.

4. Clerk's Minutes Showing Motion of Defendant to Set Aside the Information on the Ground that it was not filed in accordance with Section 591 U. S. C. A. and Section 995 of the Penal Code of California.

5. Demurrer to Information.

6. Minutes and Rulings on Demurrer to Information.

7. Verdict.

8. Motion for New Trial.

9. Motion in Arrest of Judgment.

10. Minutes and Rulings on Motion for New Trial and Motion in Arrest of Judgment.

11. Judgment and Commitment.

12. Notice of Appeal.

13. Bill of Exceptions and Assignment of Errors.

14. All Clerk's Minutes of the Proceedings.

15. This Praecipe.

MORRIS LAVINE

Attorney for Defendant

Rec'd. the within copy this 25th day of March, 1944.  
Charles H. Carr, United States Attorney, by L. L.

[Endorsed]: Filed Mar. 25, 1944. [36]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK.

I, Edmund I. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 36, inclusive, contain full, true and correct copies of: Minute Order Entered September 27, 1943; Information; Motion to Quash and Dismiss the Information; Demurrer to Information; Minute Orders Entered October 11, 1943, October 16, 1943, October 18, 1943, and November 5, 1943, respectively; Verdict; Motion for New Trial; Motion in Arrest of Judgment; Minute Order Entered November 9, 1943; Judgment and Commitment; Notice of Appeal; Bail Bond on Appeal; Affidavit for Enlargement of Time; Order Enlarging Time and Praecipe which, together with Original Bill of Exceptions and Assignment of Errors, transmitted herewith, constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to \$15.35 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 27 day of April, 1944.

EDMUND L. SMITH,

(Seal)

Clerk

By Theodore Hocke,

Deputy Clerk



## BILL OF EXCEPTIONS

[Title of District Court and Cause.]

## NOTICE OF HEARING.

To the United States of America; Charles H. Carr,  
United States Attorney, and James M. Carter, As-  
sistant United States Attorney:

Please take notice that the within proposed Bill of Exceptions will be brought on for hearing and settlement in the District Court of the United States, Southern District of California, Central Division, before the Honorable Leon R. Yankwich, District Judge, in his courtroom in the Federal Building at Los Angeles, California, on the 17 day of April, 1944, at the hour of 10:00 A. M. or as soon thereafter as said matter can be heard.

Morris Lavine,  
Attorney for Appellant.

Dated: March 29, 1944.

Bond \$3500.

This Information contains two (2) Counts charging Lester Arthur Corson with the violation of Ration Order 5C, issued pursuant to the provisions of the Second War Powers Act of 1942. Count One charges Lester Arthur Corson with illegal possession of gasoline ration coupons and Count Two charges him with unlawfully selling and transferring gasoline ration coupons. (The maximum penalty on each Count consists of one (1) year imprisonment and/or a fine of Ten Thousand Dollars (\$10,000) or both, with no minimum penalty provided.)

Lester Arthur Corson.

[Title of District Court and Cause.]

INFORMATION.

Comes now Charles H. Carr, United States Attorney in and for the Southern District of California, Central Division, who for the United States and in its behalf, prosecutes in his own proper person, and with leave of Court first had and obtained, gives the Court here to understand and be informed as follows, to-wit:

Count One.

That on or about the 2nd day of September, 1943, in the County of Los Angeles, State of California, in the District aforesaid and in the Central Division thereof, and within the jurisdiction of this Court, Lester Arthur Corson did knowingly, wilfully and unlawfully have in his possession eight hundred (800) Type "TT" gasoline ration coupons; that said Lester Arthur Corson was not the person, nor the agent of the person, to whom said gasoline ration coupons had been issued by a local War Price and Rationing Board, in violation of the provisions of Section 1394.8177 (c) of Ration Order 5C (7 Fed. Reg. 9135), as amended, issued pursuant to the provisions of the Second War Powers Act, (Pub. L. 507, 77th Cong. 2d Sess., March 27, 1942); contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

Count Two.

That on or about the 2nd day of September, 1943, in the County of Los Angeles, State of California, in the District aforesaid, and in the Central Division thereof, and within the jurisdiction of this Court, Lester Arthur Corson did knowingly, wilfully and unlawfully assign and transfer to Edgar E. Thompson eight hundred (800)

Type "TT" gasoline ration coupons in a manner other than in accordance with the provisions of Ration Order 5C (7 Fed. Reg. 9135), as amended, in violation of the provisions of Section 1394. 8177 (b) of said Ration Order 5C, as amended, issued pursuant to the provisions of the Second War Powers Act, (Pub. L. 507, 77th Cong. 2d Sess., March 27, 1942); contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

Wherefore, the said Attorney for the United States prays that due process of law may be awarded against the said defendant to make him answer the premises aforesaid.

CHARLES H. CARR

United States Attorney

CHARLES H. VEALE

Assistant U. S. Attorney.

[Verified.]

[Endorsed]: Filed Sep. 27, 1943.

---

[Title of District Court and Cause.]

MOTION TO QUASH AND DISMISS THE  
INFORMATION.

Comes now the defendant herein and moves to quash the information in each count thereof upon the following grounds, to-wit:

I.

The information and each count thereof fails to charge an offense against the laws of the United States.

II.

Section 1394.8177(c) of Ration Order 5C (7 Fed. Reg. 9135), inherently and as construed and applied in

this case is unconstitutional in that it attempts to create a crime by executive order.

III.

Public Law 507, 77th Congressional Session, March 27, 1942, inherently and as construed and applied in this case is unconstitutional in that it attempts to create power for an executive officer to create crime.

IV.

Section 1394.8177(c) of Ration Order 5C (7 Fed. Reg. 9135) is void as being in contravention to the Fifth Amendment to the Constitution of the United States in that it denies this defendant due process of law guaranteed by that amendment.

V.

Public Law 507, 77th Congressional Session, March 27, 1942, is unconstitutional in that it is in violation of the Fifth Amendment to the Constitution of the United States.

VI.

Section 1394.8177(c) of Ration Order 5c is unconstitutional as not being within the prescribed limit of congressional enactment.

VII.

The Act and Order under it are violative of the Fifth Amendment to the Constitution of the United States in that they are too vague, indefinite and uncertain to constitute a public offense.

VIII.

The Act and Order under it are violative of the Fifth Amendment to the Constitution of the United States in that they are an attempt to delegate the authority to create a penal offense to an executive officer.



## IX.

The Act and Order under it are violative of the Fifth Amendment to the Constitution of the United States in that they deny the free use of private property.

Wherefore, this defendant prays that the motion to quash and dismiss the information be granted.

Dated: October 9, 1943.

MORRIS LAVINE

Attorney for Defendant.

## POINTS AND AUTHORITIES.

United States Constitution, Articles I and II, creating a legislative and executive branch of the government.

Panama Refining Co. v. Ryan, 293 U. S. 388

United States v. Eaton, 144 U. S. 677, 36 L. Ed. 591

Donnelly v. United States, 276 U. S. 512, 72 L. Ed. 678

United States v. 11,150 Pounds of Butter, 195 Fed 657

Schechter Poultry Corp. v. United States, 295 U. S. 495

Re Rahrer, 140 U. S. 545, 35 L. Ed. 572, 11 S. Ct. 865

Marshall Field & Co. v. Clark, 143 U. S. 649, 36 L. Ed.

294, 12 S. Ct. 495

Buttfield v. Stranahan, 192 U. S. 470, 48 L. Ed. 525,

24 S. Ct. 349

Interstate Commerce Comm. v. Goodrich Transit Co., 224

U. S. 194, 56 L. Ed. 729, 32 S. Ct. 436

Butte City Water Co. v. Baker, 196 U. S. 119, 49 L. Ed.

409, 25 S. Ct. 211

Knickerbocker Ice Co. v. Stewart, 253 U. S. 156, 64 L.

Ed. 837, 40 S. Ct. 438. 11 ALR 1145, 20 N. C. C. A. 635

United States v. Eaton, 144 U. S. 677, 36 L. Ed. 591,

12 S. Ct. 764

Interstate Commerce Comm. v. Brimson, 155 U. S. 4,  
39 L. Ed. 49, 15 S. Ct. 19

United States v. Maid (D. C.) 116 Fed. 650

United States v. Grimaud, 220 U. S. 506, 55 L. Ed. 563,  
31 S. Ct. 480

Todd v. United States, 158 U. S. 282, 39 L. Ed. 982,  
15 S. Ct. 887

United States v. United Verde Copper Co., 195 U. S.  
207, 25 S. Ct. 222

Williamson v. United States, 207 U. S. 425, 52 L. Ed.  
278, 28 S. Ct. 163

United States v. George, 228 U. S. 15, 57 L. Ed. 712,  
33 S. Ct. 412

Connelly v. General Constr. Co., 269 U. S. 385, 70 L.  
Ed. 322, 40 S. Ct. Rep. 126

United States v. Noveck, 271 U. S. 201, 70 L. Ed. 904,  
46 S. Ct. Rep. 476

United States v. Katz, 271 U. S. 354, 70 L. Ed. 986, 46  
S. Ct. Rep. 513

United States v. Reese, 92 U. S. 214, 23 L. Ed. 563

First Nat. Bank v. United States, 46 L. R. A. (N. S.)  
1139, 124 C. C. A. 256, 206 F. 374

United States v. Wiltberger, 5 Wheat. 76, 5 L. Ed. 37

McCord v. State, 2 Okla. Crim. Rep. 214, 101 Pac. 280,  
25 R. C. L. 1083

Received copy of the within Notice of Motion this 9th  
day of October, 1943.

JAMES M. CARTER

Assistant U. S. Attorney U. A.

[Endorsed]: Filed Oct. 9, 1943.

[Title of District Court and Cause.]

## DEMURRER TO INFORMATION.

Comes now the defendant herein and demurs to the information on the following grounds, to-wit:

### I.

The information and each count thereof fails to charge an offense against the laws of the United States.

### II.

Section 1394.8177(c) of Ration Order 5C (7 Fed. Reg. 9135); inherently and as construed and applied in this case is unconstitutional in that it attempts to create a crime by executive order.

### III.

Public Law 507, 77th Congressional Session, March 27, 1942, inherently and as construed and applied in this case is unconstitutional in that it attempts to create power for an executive officer to create crime.

### IV.

Section 1394.8177(c) of Ration Order 5C (7 Fed. Reg. 9135) is void as being in contravention to the Fifth Amendment to the Constitution of the United States in that it denies this defendant due process of law guaranteed by that amendment.

### V.

Public Law 507, 77th Congressional Session, March 27, 1942, is unconstitutional in that it is in violation of the Fifth Amendment to the Constitution of the United States.

### VI.

Section 1394.8177(c) of Ration Order 5C is unconstitutional as not being within the prescribed limit of congressional enactment.

VII.

The Act and Order under it are violative of the Fifth Amendment to the Constitution of the United States in that they are too vague, indefinite and uncertain to constitute a public offense.

VIII.

The Act and Order under it are violative of the Fifth Amendment to the Constitution of the United States in that they are an attempt to delegate the authority to create a penal offense to an executive officer.

IX.

The Act and Order under it are violative of the Fifth Amendment to the Constitution of the United States in that they deny the free use of private property.

Wherefore, this defendant prays that this demurrer be sustained and that he be discharged and go forth in accordance with due process of law.

Dated: October 9, 1943.

MORRIS LAVINE

Attorney for Defendant

POINTS AND AUTHORITIES.

United States Constitution, Articles I and II, creating a legislative and executive branch of the government.

Panama Refining Co. v. Ryan, 293 U. S. 388

United States v. Eaton, 144 U. S. 677, 36 L. Ed. 591

Donnelly v. United States, 276 U. S. 512, 72 L. Ed. 678

United States v. 11,150 Pounds of Butter, 195 Fed. 657

Schechter Poultry Corp. v. United States, 295 U. S. 495

Re Rahrer, 140 U. S. 545, 35 L. Ed. 572, 11 S. Ct. 865

Marshall Field & Co. v. Clark, 143 U. S. 649, 36 L. Ed.

294, 12 S. Ct. 495



- Buttfield v. Stranahan, 192 U. S. 470, 48 L. Ed. 525, 24 S. Ct. 349
- Interstate Commerce Comm. v. Goodrich Transit Co., 224 U. S. 194, 56 L. Ed. 729, 32 S. Ct. 436
- Butte City Water Co. v. Baker, 196 U. S. 119, 49 L. Ed. 409, 25 S. Ct. 211
- Knickerbocker Ice Co. v. Stewart, 253 U. S. 156, 64 L. Ed. 837, 40 S. Ct. 438, 11 ALR 1145, 20 N. C. C. A. 635
- United States v. Eaton, 144 U. S. 677, 36 L. Ed. 591, 12 S. Ct. 764
- Interstate Commerce Comm. v. Brimson, 155 U. S. 4, 39 L. Ed. 49, 15 S. Ct. 19
- United States v. Maid (D. C.) 116 Fed. 650
- United States v. Grimaud, 220 U. S. 506, 55 L. Ed. 563, 31 S. Ct. 480
- Todd v. United States, 158 U. S. 282, 39 L. Ed. 982, 15 S. Ct. 887
- United States v. United Verde Copper Co., 196 U. S. 207, 25 S. Ct. 222
- Williamson v. United States, 207 U. S. 425, 52 L. Ed. 278, 28 S. Ct. 163
- United States v. George, 228 U. S. 15, 57 L. Ed. 712, 33 S. Ct. 412
- Connelly v. General Constr. Co., 269 U. S. 385, 70 L. Ed. 322, 40 S. Ct. Rep. 126
- United States v. Noveck, 271 U. S. 201, 70 L. Ed. 904, 46 S. Ct. Rep. 476
- United States v. Katz, 271 U. S. 354, 70 L. Ed. 986, 46 S. Ct. Rep. 513
- United States v. Reese, 92 U. S. 214, 23 L. Ed. 563
- First Nat. Bank v. United States, 46 L. R. A. (N. S.) 1139, 124 C. C. A. 256, 206 F. 374

United States v. Wiltberger, 5 Wheat. 76, 5 L. Ed. 37  
McCord v. State, 2 Okla. Crim. Rep. 214, 101 Pac. 280,  
25 R. C. L. 1083

Received copy of the within Demurrer to Information  
this 9th day of October, 1943.

JAMES M. CARTER

Assistant U. S. Attorney U. A.

[Endorsed]: Filed Oct. 9, 1943.

At a stated term, to wit: The September Term, A. D.  
1943, of the District Court of the United States of Amer-  
ica, within and for the Central Division of the Southern  
District of California, held in the Court Room thereof, in  
the City of Los Angeles on Saturday the 16th day of  
October in the year of our Lord one thousand nine hun-  
dred forty-three.

Present:

The Honorable Ben Harrison, District Judge.

No. 16,260 Crim.

United States of America,

Plaintiff,

vs.

Lester Arthur Corson,

Defendant.

This cause coming on before the Court; \* \* \*

The Court makes a statement and orders the motion of  
the defendant to quash denied and the demurrer to the  
Information overruled; exception allowed and noted for  
the defendant.

At a stated term, to wit: The September Term, A. D. 1943, of the District Court of the United States, held at the Court Room thereof, in the City of Los Angeles on Monday the 18th day of October in the year of our Lord one thousand nine hundred and forty-three.

Present:

The Honorable: Ben Harrison District Judge

No. 16,260 Crim.

United States of America,

Plaintiff,

vs.

LESTER ARTHUR CORSON

Defendant.

This cause coming on for plea of the defendant Lester Arthur Corson \* \* \*

The defendant moves to set aside the Information on the ground that it was not filed in accordance with Section 591 USCA and 995 Penal Code of the State of California, and on the ground that there was no reasonable and probable cause; also that the fifth Amendment to the Constitution of the United States was violated.

It is ordered that the motion be, and it hereby is, denied and an exception allowed to the defendant. \* \* \*

At a stated term, to wit: The September Term, A. D. 1943, of the District Court of the United States of America within and for the Central Division of the Southern District of California, held in the Court Room thereof, in the City of Los Angeles on Friday the 5th day of November in the year of our Lord one thousand nine hundred forty-three.

Present:

The Honorable Leon R. Yankwich District Judge

No. 16,260 Crim.

United States of America,

Plaintiff,

vs.

Lester Arthur Corson,

Defendant.

This cause coming on for trial; \* \* \*

Attorney Lavine renews motion that the Government elect between counts one and two. The Court holds the Government must elect, and the Government elects to stand on count two, and count one is ordered dismissed.

At a stated term, to wit: The September Term, A. D. 1943, of the District Court of the United States of America within and for the Central Division of the Southern District of California, held in the Court Room thereof, in the City of Los Angeles on Friday the 5th day of November in the year of our Lord one thousand nine hundred forty-three.

Present:

The Honorable Leon R. Yankwich District Judge

No. 16,260 Crim.

The United States of America,

Plaintiff,

vs.

Lester Arthur Corson,

Defendant.

This cause coming on for trial; \* \* \*

Attorney Lavine renews objection to jurisdiction and on constitutional grounds. The *objects* are overruled, as



heretofore ruled on, and an exception noted for the defendant. \* \* \*

The defendant demands election by plaintiff between counts 1 and 2. The demand is denied without prejudice to renew it at the close of the Government's case. \* \* \*

The Court reminds the jury of the admonition heretofore given and excuses the jury.

In the absence of the jury, Attorney Lavine for the defendant moves for directed verdict of not guilty and to strike the testimony of witnesses Foster and Taylor. The Court denies the motions and exceptions are allowed to the defendant.

Attorney Lavine renews motion that the Government elect between counts 1 and 2. The Court holds the Government must elect and the Government elects to stand on count 2, and count 1 is ordered dismissed. \* \* \*

At 4:50 P. M. Attorney Lavine excepts to certain portions of the charge. \* \* \*

Whereupon, pursuant to the Court's order, the verdict is filed and entered, the verdict being as follows:

(Verdict of guilty, count 2.)

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[Title of District Court and Cause.]

### VERDICT.

We the jury in the above-entitled cause find the defendant Lester Arthur Corson guilty as charged in the second count of the information.

Los Angeles, California, November 5, 1943.

RALPH B. OTTUN

Foreman of the Jury

[Endorsed]: Filed Nov. 5, 1943.

[Title of District Court and Cause.]

MOTION FOR NEW TRIAL.

Comes now the defendant herein and moves for a new trial upon the following grounds, to-wit:

I.

The verdict is contrary to the law and the evidence.

II.

The trial was had upon an information without any reasonable or probable cause having been shown therefor, in accordance with the provisions of Section 591 United States Codes Annotated.

III.

The information fails to charge an offense against the laws of the United States.

IV.

Section 1394.8177(c) of Ration Order 5C (fed. Reg. 9135), inherently and as construed and applied in this case is unconstitutional in that it attempts to create a crime by executive order.

V.

Public Law 507, 77th Cong. Sess., March 27, 1942, inherently and as construed and applied in this case is unconstitutional in that it attempts to create power for an executive officer to create a crime.

VI.

Section 1394.8177(c) of Ration Order 5C is void as being in contravention to the Fifth Amendment to the Constitution of the United States in that it denies this defendant due process of law guaranteed by that amendment.

## VII.

Public Law 507, 77th Cong. Sess., March 27, 1942, is unconstitutional in that it is in violation of the Fifth Amendment to the Constitution of the United States.

## VIII.

Section 1394.8177(c) of Ration Order 5C is unconstitutional as not being within the prescribed limit of congressional enactment.

## IX.

The Act and Order under it are violative of the Fifth Amendment to the Constitution of the United States in that they are too vague, indefinite and uncertain to constitute a public offense.

## X.

The Act and Order under it are violative of the Fifth Amendment to the Constitution of the United States in that they are an attempt to delegate the authority to create a penal offense to an executive officer.

## XI.

The Act and Order under it are violative of the Fifth Amendment to the United States Constitution in that they deny the free use of private property.

## XII.

The Court erred in its rulings in the trial of the case.

## XIII.

The Court erred in instructions given, and particularly in giving the instruction that a crime exists through violation of an executive order.

XIV.

There was no reasonable or probable cause for filing the information. The proceedings violated Section 591, United States Codes Annotated, and Section 995 of the Penal Code of California.

XV.

Ration Order 5C has to date been amended 82 times. The amendment or change of a regulation repeals the regulation. (United States v. Hark, 49 Fed. Supp. 95, 97.)

XVI.

The information was sworn to by a person not such an officer of the United States as is empowered to make arrests under the laws of the United States.

Dated: November 8, 1943.

MORRIS LAVINE

Attorney for Defendant.

Received copy of the within this 8th day of November, 1943.

CHARLES H. CARR

U. S. Attorney

Attorney for Plaintiff

By JAMES M. CARTER

Asst. U. S. Attorney

[Endorsed]: Filed Nov. 8, 1943.



[Title of District Court and Cause.]

MOTION IN ARREST OF JUDGMENT.

Comes now the defendant herein and moves in arrest of judgment upon the following grounds:

I.

The verdict is contrary to the law and the evidence.

II.

The trial was had upon an information without any reasonable or probable cause having been shown therefor, in accordance with the provisions of Section 591 United States Codes Annotated.

III.

The information fails to charge an offense against the laws of the United States.

IV.

Section 1394.8177(c) of Ration Order 5C (Fed. Reg. 9135), inherently and as construed and applied in this case, is unconstitutional in that it attempts to create a crime by executive order.

V.

Public Law 507, 77th Cong. Sess., March 27, 1942, inherently and as construed and applied in this case, is unconstitutional in that it attempts to create power for an executive officer to create a crime.

VI.

Section 1394.8177(c) of Ration Order 5C is void as being in contravention to the Fifth Amendment to the Constitution of the United States in that it denies this defendant due process of law guaranteed by that amendment.

VII.

Public Law 507, 77th Cong. Sess., March 27, 1942,

is unconstitutional in that it is in violation of the Fifth Amendment to the Constitution of the United States.

### VIII.

Section 1394.8177(c) of Ration Order 5C is unconstitutional as not being within the prescribed limit of congressional enactment.

### IX.

The Act and Order under it are violative of the Fifth Amendment to the Constitution of the United States in that they are too vague, indefinite and uncertain to constitute a public offense.

### X.

The Act and Order under it are violative of the Fifth Amendment to the Constitution of the United States in that they are an attempt to delegate the authority to create a penal offense to an executive officer.

### XI.

The Act and Order under it are violative of the Fifth Amendment to the United States Constitution in that they deny the free use of private property.

### XII.

The Court erred in its rulings in the trial of the case.

### XIII.

The Court erred in instructions given, and particularly in giving the instruction that a crime exists through violation of an executive order.

### XIV.

There was no reasonable or probable cause for filing the information. The proceedings violated Section 591, United States Codes Annotated, and Section 995 of the Penal Code of California.

## XV.

Ration Order 5C has to date been amended 82 times. The amendment or change of a regulation repeals the regulation. (*United States v. Hark*, 49 Fed. Supp. 95, 97.)

## XVI.

The information was sworn to by a person not such an officer of the United States as is empowered to make arrests under the laws of the United States.

Dated: November 8, 1943.

MORRIS LAVINE

Attorney for Defendant

(Same receipt as on Motion for New Trial.)

## POINTS AND AUTHORITIES.

United States Constitution, Articles I and II, creating a legislative and executive branch of the government.

*Panama Refining Co. v. Ryan*, 293 U. S. 388

*United States v. Eaton*, 144 U. S. 677, 36 L. Ed. 591

*Donnelly v. United States*, 276 U. S. 512, 72 L. Ed. 678

*United States v. 11,150 Pounds of Butter*, 195 Fed. 657

*Schechter Poultry Corp. v. United States*, 295 U. S. 496

*Re Rahrer*, 140 U. S. 545, 35 L. Ed. 572, 11 S. Ct. 865

*Marshal Field & Co. v. Clark*, 143 U. S. 649, 36 L. Ed. 294, 12 S. Ct. 495

*Buttfield v. Stranahan*, 192 U. S. 470, 48 L. Ed. 525, 24 S. Ct. 349

*Interstate Commerce Comm. v. Goodrich Transit Co.*, 224 U. S. 194, 36 L. Ed. 729, 32 S. Ct. 436

*Butte City Water Co. v. Baker*, 196 U. S. 119, 49 L. Ed. 409, 25 S. Ct. 211

Knickerbocker Ice Co. v. Stewart, 253 U. S. 156, 64 L. Ed. 837, 40 S. Ct. 438, 11 ALR 1145, 20 N. C. C. A. 635

United States v. Maid (D. C.) 116 Fed. 650

Interstate Commerce Comm. v. Brimson, 155 U. S. 4, 39 L. Ed. 49, 15 S. Ct. 19

United States v. Grimaud, 220 U. S. 506, 55 L. Ed. 563, 31 S. Ct. 480

Todd v. United States, 158 U. S. 282, 39 L. Ed. 982, 15 S. Ct. 887

United States v. United Verde Copper Co., 196 U. S. 207, 25 S. Ct. 222

Williamson v. United States, 207 U. S. 425, 52 L. Ed. 278, 25 S. Ct. 163

United States v. George, 228 U. S. 15, 57 L. Ed. 712, 33 S. Ct. 412

Connelly v. General Constr. Co., 269 U. S. 385, 70 L. Ed. 322, 46 S. Ct. Rep. 126

United States v. Noveck, 271 U. S. 201, 70 L. Ed. 904, 46 S. Ct. 476

United States v. Katz, 271 U. S. 354, 70 L. Ed. 986, 46 S. Ct. Rep. 513

United States v. Reese, 92 U. S. 214, 23 L. Ed. 563

United States v. Wiltberger, 5 Wheat. 76, 5 L. Ed. 37

McCord v. State, 2 Okla. Crim. Rep. 214, 101 Pac. 280, 25 R. C. L. 1083

United States v. Patterson, 37 L. Ed. 999

United States v. Ewing, 35 L. Ed. 388

United States v. Quaritius, 267 Fed. 227

Section 951 United States Codes Annotated

[Endorsed]: Filed Nov. 8, 1943.



At a stated term, to wit: The September Term, A. D. 1943, of the District Court of the United States of America within and for the Central Division of the Southern District of California, held in the Court Room thereof, in the City of Los Angeles on Tuesday the 9th day of November in the year of our Lord one thousand nine hundred forty-three.

Present:

The Honorable Leon R. Yankwich District Judge.

No. 16,260 Crim.

The United States of America,

Plaintiff,

vs.

Lester Arthur Corson,

Defendant.

This cause coming on for hearing (1) motion for new trial; (2) motion in arrest of judgment; and (3) sentence on count 2; Atty. Lavine presents motions; Attorney Carter replies, and it is ordered that the said motions be, and they hereby are, denied, and exceptions noted. \* \* \* And, no legal cause appearing why judgment should not be pronounced, the Court now pronounces sentence as follows:

(Judgment)

[Title of District Court and Cause.]

Judgment and Commitment.

Criminal: Information in 2 counts for violation of  
~~U. S. C. Title~~ Ration Order 5C issued pursuant to  
the provisions of 2nd War Powers Act of 1942.

On this 9th day of November, 1943, came the United  
States Attorney, and the defendant Lester Arthur Corson  
appearing in proper person, and with counsel, and

The defendant having been convicted on verdict of the  
jury of the offense charged in the 2nd count of the in-  
formation in the above-entitled cause, to wit: on or about  
September 2, 1943 in the County of Los Angeles, Cali-  
fornia assign and transfer 800 type "TT" Gasoline Cou-  
pons in a manner other than in accord with the provisions  
of Ration Order 5C, (7 Fed. Reg. 1935) as amended in  
viol. of provisions of Section 1394.8177(b), of said  
Ration Order 5C, as amended issued pursuant to 2nd  
War Powers Act, Pub. L. 507, 77th Cong. 2nd session,  
3/27/42 and the defendant having been now asked  
whether he has anything to say why judgment should not  
be pronounced against him, and no sufficient cause to the  
contrary being shown or appearing to the Court, It Is  
by the Court

Ordered and Adjudged that the defendant, having been  
found guilty of said offenses, is hereby committed to the  
custody of the Attorney General or his authorized repre-

sentative for imprisonment for the period of one year in an institution of the jail type.

It is further ordered that the first count of the information be dismissed.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

(Signed) LEON R. YANKWICH  
United States District Judge

The Court recommends commitment to

Filed this 9th day of November 1943.

(Signed) EDMUND L. SMITH  
Clerk

(By) LOUIS J. SOMERS  
Deputy Clerk

[Title of District Court and Cause.]

NOTICE OF APPEAL.

Name and address of appellant: Lester Arthur Corson,  
County Jail, Los Angeles, Calif.

Name and address of appellant's attorney: Morris  
Lavine, 620 Bartlett Building, Los Angeles, Calif.

Offense: Viol. provisions of Sec. 1394.8177(b) or  
Ration Order 5C as amended, issued pursuant to pro-  
visions of Second War Power Act Pub. Law. 507, 77th  
Cong. Sess. March 27, 1942.

Date of judgment: November 9, 1943.

Brief description of judgment and sentence: One year  
in jail.

Name of prison where now confined if not on bail:  
Los Angeles County Jail, Los Angeles, Calif.

I, the above-named appellant, hereby appeal to the  
United States Circuit Court of Appeals for the Ninth  
Circuit from the judgment above mentioned on the  
grounds set forth below:

Pursuant to Rule V, I hereby serve notice that I do  
not elect to enter upon the service of the sentence pend-  
ing appeal.

Dated: November 9, 1943.

LESTER ARTHUR CORSON

Appellant

MORRIS LAVINE

Attorney for Appellant



## Grounds of Appeal:

1. The evidence is insufficient to support the verdict: the verdict is contrary to the law and the evidence.

2. The Court should have granted the motion for a *direct* verdict at the close of the Government's case and also at the close of the entire case.

3. The information fails to state a public offense against the laws of the United States.

4. There is no reasonable or probable cause upon which the information was based.

5. The Court erred in rulings made throughout the trial of the case and at the close of the case, and in its order overruling the motion for a new trial and the motion in arrest of judgment.

6. The Court erred in instructions given, particularly on the question of violation of law created by executive order.

7. The Court erred in ruling that Section 1394.8177(c) of Ration Order 5C, inherently and as construed and applied in this case is constitutional when it is an attempt to create a crime by executive order.

8. The Court erred in upholding the constitutionality of the Act.

9. The Court erred in holding that the Act and Orders pursuant thereto are not violative of the Fifth Amendment to the Constitution of the United States.

MORRIS LAVINE

Attorney for Appellant.

Received copy of the within this 9th day of November,  
1943.

CHARLES H. CARR

U. S. ATTORNEY

Attorney for Plaintiff

By JAMES M. CARTER

Asst. U. S. Attorney

[Endorsed]: Filed Nov. 9, 1943.

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When the case was called before Judge Ben Harrison on preliminary motions Attorney Morris Lavine stated to the court that there were 73 amendments to the regulation involved in this case and that it was impossible for citizens to keep up with the changes and that the effect of these constant changes was to deny to the citizens due process of law in failing to inform them of the regulation so that they would know when they were in violation thereof, and that such procedure violated the Fifth Amendment to the Constitution of the United States.

All objections were overruled, and exception noted. [1-a\*]

The Court: United States vs. Lester Arthur Corson for trial.

Mr. Carter: Ready for the government.

Mr. Lavine: At this time, in order to preserve our record, we again renew our objection on the jurisdiction of the Court to proceed on the ground that the charges here do not allege a public offense, and on the various constitutional questions which we have urged.

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\*Page numbering appearing at foot of page of original Bill of Exceptions.

The Court: The motion will be denied.

Mr. Lavine: Exception.

The Court: I have examined the record. It is not necessary under our rules to renew these motions. You have made a motion to quash and it has been ruled upon. And it is not necessary to preserve the record by doing it again. It is only when you move to make a motion for the insufficiency of the evidence to protect your case at the close of the government's case, but otherwise you do not have to renew it.

It have read the record and not only agree with the conclusion, but have so ruled. I have held that the OPA is a Federal enactment and violations thereof can be punished as a matter of law. I did it in the Kahn case in San Diego, and in others and so there is no use taking time—

Mr. Lavine: I appreciate that, but when I made my original objections the government came back with that these acts under the OPA were under the Second War Powers [1] Act and the directives which came as a result of that Second War Powers Act followed in the line of that Act, and not specifically under the Emergency Price Control Act of 1942, but under the Second War Powers Act.

The Second War Powers Act, your Honor, gives the President the right to issue directives and any violation of his particular order would, if that is valid legislation, be a violation of the section. But here under the ex-

planation given by the government there was no Presidential order, and the language of the Second War Powers Act seems very specific in Section 2-A-2 that it must be pursuant to his order and his power and his direction.

There is no showing, and I find no legislation anywhere, and no order of the President relating to these particular Acts and under the government's contention there is a delegation of power to someone else, and then there is a delegation of power to someone else, and that that someone else then issued a directive.

The Court: It is not material in a governmental order to set forth exactly the source of authority so long as it is set forth. The source of the statute which is being violated is set forth, the rest becomes a question of law.

Mr. Lavine: Exception, your Honor.

(Jury duly impaneled and sworn.) [2]

Mr. Lavine: At this time the defendant demands an election, if your Honor please, as between count 1 and 2.

Mr. Carter: I don't think the government will be required to elect, if at all, until the conclusion of the case.

The Court: It is my policy, if there is such a situation, to do it in the light of the testimony rather than in advance, because until the evidence is in we do not know whether the possession implied is the possession implied in count 1 or count 2. So I will deny it without prejudice, and allow you to renew it at the end of the government's case.

Mr. Lavine: Exception. [3]



JOHN E. FOSTER,

a witness called by and on behalf of the Government, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Carter:

I live at 6233 DeLongpre Avenue, Hollywood, California. I am an investigator for the Office of Price Administration, an agency of the United States Government. I have been acting as such investigator approximately two years. I know Edgar E. Thompson. On September 2, 1943, I arrested Thompson.

Mr. Lavine: I object to that as irrelevant, incompetent and immaterial.

Mr. Carter: It is a preliminary matter.

The Court: A preliminary matter, very well.

By the witness:

After Thompson had been arrested on September 2, 1943, I searched his person. When this search was made Investigator Taylor, who also works with me, was with me.

Mr. Lavine: I object to all these matters with reference to searching Thompson as irrelevant, incompetent and immaterial, and not within the issues of this case.

The Court: I will reserve your right to strike, unless the acts are ascribed to this defendant. Whether or not that may be, I will preserve your right to strike unless [4] there is a connection with the defendant.

Mr. Lavine: May we have a running objection with relation to this testimony in regard to Thompson?

The Court: Yes.

Mr. Lavine: And there will be an exception to any ruling permitting it.

(Testimony of John E. Foster.)

By the witness:

I searched him on four different occasions on that day. The last time I searched him on that day was on Clark Street, I believe, right off Sunset Boulevard. I searched his car and he and his wife. He then had a convertible Buick coupe. I was searching to find out whether or not he had any gasoline rationing coupons in his possession, or—in his immediate possession or in the automobile. I did not find any gasoline rationing coupons of any kind either in the possession of his wife or in his possession, or in the car. The hour that I made this search was 6:30 p. m.

The part of town this street is in that I referred to is known as the county strip, out towards Beverly Hills.

Thompson left the presence of Taylor and myself; drove in an automobile. We followed him thereafter; he met the defendant Corson. Until the time that Thompson met Corson he was under my observation at all times. I followed the Thompsons in another automobile that we had, a Studebaker, I and Investigator Taylor. Thompson drove East on Sunset Boulevard approximately two blocks, I believe, to 8801 Sunset [5] Boulevard. At 8801 Sunset Boulevard there is a used car lot. I believe the address was 8801 Sunset Boulevard. It is on the north side of Sunset Boulevard. It is a corner lot. The place where I searched Thompson was approximately two blocks west of 8801 Sunset Boulevard.

Thompson drove west on Sunset and turned north on the side street off Sunset and pulled into the parking lot, or attempted to. But there was a chain across. And he then backed up into this side street, going north up a

(Testimony of John E. Foster.)

hill—it doesn't go all the way through on Sunset, there is quite a steep hill—and he backed up this hill and pulled down just about even with this driveway facing south on this side street parallel with the parking lot. At that time the position of his car was headed towards Sunset Boulevard and immediately north of Sunset and immediately adjacent to the parking lot.

Thompson got out of the car, and his wife moved over into the driver's seat. We had parked right almost directly across the street from this parking lot, where there are a few stores and a bar. And there was a little half—semi-circle in there where they park automobiles and we had pulled into that place, and faced almost directly across the parking lot, and pulled our car facing the parking lot so that we could see all angles of the parking lot. We were on the south side of Sunset Boulevard directly across the street from the parking lot. Investigator Taylor was with [6] me; I was in the back seat and Investigator Taylor was in the front seat.

Thompson got out of the car and walked over on the lot and no one approached him for a few seconds, so he walked over to another lot that was just adjacent to that on the west of this particular lot. He was still in my view. He walked along the sidewalk and there was a man over in the next lot. He walked over and engaged in conversation with this man there for probably three or four minutes. The man was Jerry Davis. Then they didn't shake hands even. That was just a conversation.

Next this Cadillac drove up, came west on Sunset Boulevard and drove up right half way in the street and half way in the driveway on Sunset there, near 8801.



(Testimony of John E. Foster.)

The front part, that would be on Sunset. The car when it was parked with relation to the adjoining parking lot was probably not more than ten feet from the adjoining lot. It was just an imaginary dividing line between the two lots. However, there is a sign there which shows that it is the dividing line, because one is Jerry Davis and the other is 8801, I believe.

After this Cadillac car drove up the defendant, Mr. Corson, got out of the driver's seat and walked over. There was another man with him, sitting in the car, and he didn't get out at that time. Corson got out, walked over to Davis and Thompson and talked to them for a few minutes. None of them made contact with their hands or anything else. They [7] didn't even shake hands. They talked for probably a couple of minutes, and then Corson walked back to his own lot. He was on the sidewalk, on Davis' lot at the time, and they all walked toward 8801, and then Davis and Thompson stayed back for just a minute, and then Corson went on in, and he went over and stood in front of a little shack on his lot for a couple of seconds. Thompson was in full sight of us.

And then Davis and Thompson both walked over on 8801, on the lot there, and stood in front of this little unpainted shack that was on the lot there, and talked; and then Davis—finally Corson left and went to the back of the lot alone for a minute, and at that time Davis left Thompson and walked back on his own lot, leaving Thompson there by himself. That is, they were about ten or fifteen feet from this Cadillac at the time where this other man was sitting.

Corson then came back—he had gone toward the shack



(Testimony of John E. Foster.)

on the lot—came over and reached in his inside coat pocket and took out a white folded package about this long (indicating), and I would say about that wide (indicating). I would say it was 12 to 14 inches long and probably 3 to 4 inches wide, and handed it to Thompson. They were a good foot or a foot and a half apart at that time, and he had to reach out and give it to Thompson. Thompson took it and started to put it inside of his pocket, but he had a loafer jacket on, and so he started to put it in here (indicating) and instead he put it here (indicating). (Witness indicates [8] first that Thompson attempted to put the paper on the inside, right inside of his jacket and thereafter put the paper in the right, outside right coat pocket.)

At the time this happened just Thompson and Corson were there. The other man was sitting in the car, but he did not make contact. Davis was out of the picture then.

We immediately started the car. Investigator Taylor was the driver, and I told him to start the car and get over there. Thompson and Corson then walked together toward Thompson's automobile, which was east of them at the time. At the time these papers that I have talked about passed from Corson to Thompson, and as to where Thompson and Corson were standing with relation to my car—the only way I can say is sort of kind of oblique. They weren't directly in front of us, they were on a angle, about like this (indicating) from our automobile. I would say about 15 degrees off of straight ahead, and across the street. Our car was headed into the street.

We immediately started the car and went across the street and they were walking then east, so we pulled east, and pulled up right in front of the Thompson car, and

(Testimony of John E. Foster.)

headed our car into the driveway on the side street—on the east side of 8801, and that made them coming like directly toward us. We were in the driveway because there was a chain across there. We were on the sidewalk and the driveway. We jumped out of the car and I grabbed Mr. Corson and [9] Investigator Taylor grabbed Thompson. I knew beforehand where Thompson was going at the time I went to this location, notwithstanding that my partner Taylor grabbed Thompson.

I told Taylor to get the package, which he did. It was in the right hand pocket, and also told him to search him thoroughly, and he found there was no inside coat pocket on this loafer jacket, and he reached in the right hand pocket where we had seen him place this, these sheets or this package that he had received, and pulled out these coupons. Taylor pulled the coupons out of Thompson's right coat pocket—or jacket pocket.

After I had searched Thompson, and up to the time that Taylor and I, in the presence of Corson, took the articles I described out of Thompson's pocket, he had never been out of the vision of either of us even for a second.

(Thereupon, the documents referred to were marked as Government's Exhibits 1, 2, 3 and 4 for identification.)

By the witness:

As to this sheet of gasoline ration T coupons, marked Government's Exhibit 1 for identification, I have seen that before. I first saw that when Investigator Taylor pulled it from Thompson's right hand jacket pocket. I have just described the time and the circumstances of that.

(Testimony of John E. Foster.)

As to Government's Exhibit 2 for identification, a second sheet, I saw this at the same time and under the same conditions as a part of the papers pulled out of Thompson's [10] pocket.

As to Government's Exhibit 3 for identification I have seen that before. It was with the other papers at the same time.

As to Government's Exhibit 4 for identification, that was also part of it.

I am familiar with the various types of coupons issued by the Office of the OPA. I have been an investigator for two years with them. I have charge of the transportation department. That is the department that concerns itself with gasoline rationing. The TT coupons, better known as double T, are for fleet owners who have trucks and each coupon is good for five—in exchange for five gallons of gasoline.

On the large sheets, Government's Exhibits 1, 2 and 3 for identification, I believe there were 240 on each large sheet.

On Government's Exhibit 4 for identification I believe there were 80. However, I am not positive about that, what were on this smaller sheet, now. That makes a total of 800 coupons.

(Witness asked to fold the papers in the manner in which they were folded when he saw them passed from Corson to Thompson.)

By the witness:

They were folded in just such a manner as this (demonstrating a fold about 12 inches long and 3 or 4 inches [11] wide.) Thompson made further folds in

(Testimony of John E. Foster.)

them when he took them in his possession. This is the type package that was handed from Corson to Thompson. However, when Thompson put them in his pocket they were folded like this (indicating) and stuffed down, because they were still approximately sprung like this; when they were pulled out of his pocket they sprung back like this (indicating).

As to whether I observed where Corson got the paper he handed to Thompson, he got them from an inside coat pocket on the left side.

The arrest was made at that time. Not at the time that he pulled it from his coat, no; at the time that we reached the spot, that is when the arrest was made.

There were some conversations that occurred in the presence of Corson and myself at or about that time. Besides myself and Corson, Investigator Taylor and Thompson were present. This occurred about a **quarter of seven**.

Q. And what was said at that time by any of those present?

Mr. Lavine: I object to that as no proper foundation laid.

The Court: Objection overruled.

Mr. Lavine: Exception.

The Witness: I told him that we had witnessed the transaction and that we had been after him for a long time, and that—and then put him in the car and he wanted to [12] know what it was all about.

Q. By Mr. Carter: Was anything said by Thompson in the presence of Corson?

A. I asked Thompson where he got these things—



(Testimony of John E. Foster.)

Mr. Lavine: I object to that as incompetent, irrelevant and no foundation laid, no proper foundation laid.

Mr. Carter: In the presence of the defendant.

The Court: It was in the presence of the defendant? Overruled.

Mr. Lavine: I did not object on the ground that it was hearsay; I objected on the grounds there was no proper foundation laid.

The Court: Objection overruled.

Mr. Lavine: Exception.

The Witness: I asked him where he got these coupons, and he pointed toward Corson and says, "Him."

The Court: Did Corson say anything?

The Witness: Corson denied that he knew anything about it at all.

#### Cross-Examination

By Mr. Lavine:

I did not know that Mr. Thompson was an ex-convict. That was the conclusion, but I did not know it. I had not been following him for some days. I never followed him before that day. Never saw Thompson before September 2nd in my life. I first took Thompson into custody that day, very [13] close to noon. Noon time of September 2nd. At the time I took him into custody I did not tell him if he would take me over to Mr. Corson's place that I would see that he was dealt leniently with. At no time did I tell him that. I did not tell him that if he gave me further information that I would see that he got a very light sentence, or no sentence at all.

Thompson did not, just out of a clear sky, take us over to Mr. Corson's place of business. I can't tell you how

(Testimony of John E. Foster.)

it happened. It would be a guess on my part. I can tell you what happened.

I met Thompson then twice, one time on September 2nd. I met him at a service station in Manhattan. That was not the service station of an E. Thompson. The man who run that is Luxton Arneson. Thompson then had in his possession some ration stamps. I took them from his wife. His wife did not have some ration stamps in her possession. He threw them to her and I grabbed them. They were all kinds, TT's, T's and B's, I think. And there could have been other kinds. I am not positive at the moment. I placed Thompson under arrest at that time. I did not take his wife into custody at that time. I released her. I did not tell Thompson that I would release her if he would take me over to this place in Hollywood. I released Mrs. Thompson almost immediately. In fact, we never did arrest Mrs. Thompson. She was never under arrest. So we didn't have any hold on her. [14]

As to whether she had these stamps in her possession, well, we witnessed him throw them to her, so we had nothing on her; he had the stamps.

We had a conversation with him at that point. We did not tell him if he would take us to Hollywood we would then deal leniently with him. We did not know at that time the source of the tickets. I did not at that time make arrangements to drive with Thompson to any other place. We took him first back to his home in Long Beach, and from his home we brought him to the Federal Building and had him arraigned up to the United States Commission on the 2nd of September.

(Testimony of John E. Foster.)

He said that he had an appointment to buy some more stamps on that day. He said if you boys hadn't got me when you did you would have got me getting the stamps, because I am due there now, and he said that it was on the strip, and that it was a car lot. He didn't know the man's name, only Doc—he said that was all he knew him as. And so we asked him if he would keep his appointment with this man and he said he would. And so we went out with him then there to this lot, as I related prior, and he went through with it.

When I got them after he had kept this appointment with this man Investigator Taylor, Thompson and myself were present. There was no other official of the OPA.

Mr. Taylor said quite a few things in my presence to Mr. Thompson. Mr. Taylor did not inform him that if he kept his appointment that he would be dealt leniently with. It is [15] my contention that with no argument whatsoever Mr. Thompson then agreed to keep his appointment and have us follow him. We didn't at any time tell Thompson to go out there and keep his appointment. As a matter of fact, we explained to him in his position that he didn't have to do anything, he didn't have to co-operate, but if he wanted to it is all right, we wouldn't promise him any leniency whatever. We made no reference to that. In fact, he stated to us that he had been in prison before and he did not know why he had done this, and that since he had been out he got married and had his wife, and he would do anything to stay with his wife. And we told him that he didn't have to do a thing, that he was just as free—when he walked out of



(Testimony of John E. Foster.)

the Commissioner's office—just as free as we were, and he stated that he would go through it anyway.

I said that he had been recently married, that he wanted to be with his wife. He talked about her quite a bit and said that he wanted to stay with his wife, and we told him we had no jurisdiction over it whatever, what he would get, and could give him no leniency or promise him any.

We had not then filed the five charges against him for illegal possession. He had been arraigned on the complaint only. I had sworn to that complaint. I did not charge him with illegal sale and possession of these rationing coupons. I charged him with violation of rationing order 5-C. As to whether there were five different counts, they [16] had taken care of that. Our attorneys do it, and I had made no contact with that office during the day. We left the office before it was open and I made no contact even by telephone.

His wife heard some conversation between Thompson and I at the time he was taken into custody, and his wife heard some conversation between he and I when we were driving from Long Beach. I rode in their car and Mr. Taylor drove the other car from Long Beach to the Federal Building; and his wife probably heard the conversation while we were on Clark and Sunset Boulevard, prior to going to Mr. Corson's lot.

I rode in Thompson's car. Thompson told me that he sold one car that belonged to him, and the reason he told us that was because we knew that he had owned this car and questioned him about it, a Buick that he had been driving previously. He said he owned the automo-



(Testimony of John E. Foster.)

bile he was then in, and he said he had sold another car to this used car lot prior to that time. He told me what kind of a car he had sold there; we knew what kind it was. It was a Buick convertible sedan.

Thompson and Arneson, who were both in Manhattan, were reported for dealing in coupons, and we checked those boys up, and they described this car which was selling them to them, and later Arneson got the license number of this Buick automobile, and we traced it down and saw that it be- [17] longed to a young couple, and asked them where the car was, and they said they had sold this convertible. And that is how we got a line on Thompson. They had sold this convertible to Thompson. So that that was the second car he had been in. And so we went to see him again, and found Thompson, and after we got Thompson we asked him what he had done with the other car he was in and he said he had sold it, and related who he had sold it to. He said he had sold it to Doc, the man where he got the coupons. He said, I believe, he had sold it for \$1850. However, that is just my recollection. I did not make a note of it at the time because it had no bearing on it.

I saw that car over on the lot after I went over to that lot. It was still on the lot. That was the lot that I then was observing to observe Mr. Corson. We did not ever search that car. We did not search that car prior to making the arrest of Mr. Corson. We did not search it afterwards.

I left the Commissioner's office that afternoon with Mr. Thompson at, I would say 4:30—4:00 or 4:30. From there we went out on the strip. I went out on the strip

(Testimony of John E. Foster.)

along about 4:00 or 4:30. In fact, I rode with Mr. Thompson. His wife was also in his car. She rode all the way out there.

We drove to Clark and Sunset and there we went through the formality of searching Mr. Thompson and his wife and his automobile, because he was going in to see Mr. Corson, and [18] followed him to Mr. Corson's lot whilst he made contact with him, and there was nothing passed between them, and Thompson drove out, and we followed him back to Clark and Sunset, and asked him if he had anything, and he said he did not. And we did not search him because we had seen him at all times and he had not even come in contact with Mr. Corson or anyone else.

I had parked opposite this lot. We were in a little, light Studebaker Tudor. At the time that we were parked we had our doors closed. I was sitting on the right hand side. I was across the street from this lot, from 8801. I don't know what the width of the street is. I would judge we were somewhere from 100 to not more than 125 feet from the spot where Mr. Corson handed this bundle to Thompson. I would say not more than 125 feet, if that much.

There was no one else on the lot at the time. As to whether there was a man sitting in an automobile—he wasn't on the lot. This man wasn't—he jumped out and ran at the time we took Mr. Corson and Mr. Thompson in, but that was not on the lot, that was on the sidewalk, in the driveway, and partially in the street; because later on we moved the car in the lot so it wouldn't be on the street.

(Testimony of John E. Foster.)

There were on the lot probably ten—twelve cars. I moved from Thompson's car into another automobile. We moved from Thompson's automobile into another automobile at Clark and Sunset. When Thompson got out and went over there we [19] had not been in the car from—for two blocks west, for a matter of two blocks. We were right directly behind Thompson's car in the other automobile. There were no cars between his car and ours.

We stopped our car prior to when he stopped his car because we pulled off to the right in the parking lot, and he went up to the corner and turned up into the driveway, and we pulled in and parked, and was watching them when they pulled up the hill and backed down. His car was not on the used car lot where Corson was located when it was stopped, it was in the street. He did not afterwards move it into the lot. He did not at any time move it into the lot, on that particular trip. There was a trip prior when he went to Mr. Corson to make arrangements. That occurred between 4:30 and 5:00 o'clock.

I made two trips to this lot. I did not send him in to make those arrangements; he went in to make them. I saw Corson at that time on the first occasion. I also saw on the lot at that time two other men. I saw Thompson talking to them.

As to whether Thompson was talking to three men on the lot on the first occasion that I went in, Thompson talked to Corson only on the first occasion. It didn't appear that he was talking to the other two men. I wasn't within hearing distance, but he was facing Corson and



(Testimony of John E. Foster.)

Corson had been doing something with his automobile, because he got out of [20] the car and Thompson stood there and they stood and talked, but whether one of these men when they walked by talked to him, I don't know; but they didn't stand there and enter into any conversation with him, no. But whether they spoke to him or he spoke to them, I couldn't tell you as to that.

All of us came back around 6:30. It was still very light. It was probably two minutes after I got there on the second occasion before I saw Thompson go into the lot. We were directly behind Thompson on that second occasion. We were parked before he was. We were behind him, but we were coming down Sunset Boulevard. We pulled in through this lot to our right, and Thompson came to the corner, and he had to turn around and back up, and by that time we got our car parked—by the time he got his car facing in the opposite direction, we were already parked and watching him.

Thompson couldn't have gone into the lot. There was a chain across the driveway there. So all he did was to pull into the driveway and pull his front wheels around on the sidewalk, and he backed out. There was also another car right alongside on this driveway, I remember, because it was a convertible Ford coupe, and it was parked in there so the cars couldn't get in there.

This wasn't in front of the lot. This car that was across the driveway. That was on the side street, on the east side of the lot, which is not the front. I mean the [21] point at which Thompson marked his car. He was not on Sunset Boulevard; Thompson was parked on the side street. I was parked on the south side of Sunset Boule-



(Testimony of John E. Foster.)

vard, facing Sunset Boulevard. From the point where I saw Thompson go into the lot it would probably be 140 feet—between 125 and 140 feet.

Thompson walked across the corner of the lot—got on the sidewalk and walked straight on down the sidewalk to where Jerry Davis was standing, and entered into the conversation with him.

Jerry Davis was a dark complected man, six feet, he was slight, with a thin face.

I did not see Thompson go into the Jerry Davis lot. He stood in front of the lot on the sidewalk and talked to Jerry Davis. He talked to Jerry Davis around two or three minutes. Corson came up and talked to them. All three of them were engaged in conversation afterwards.

Corson was there with one man, and they parked half way up the lot, up toward the rear of 8801, and Corson got out of the car and walked over to where Jerry Davis and Thompson were talking and talked to them for about a minute or two, and then walked to his own lot. All that I saw Corson hand to this man was some paper. I couldn't tell what it was from the distance that I was.

As to whether Corson was facing me or had his back to me, I wouldn't say either. I could see daylight right [22] between them. One of them was facing east—Thompson was facing east, and Corson was facing west when he handed the paper to Corson, and we could see right between the two of them. I was 140 feet away from where Thompson parked the car and entered the lot, but not more than 115—between 115 and 125 feet at the very most from where this took place. I could

(Testimony of John E. Foster.)

not hear any conversation. I did not hear any conversation between Jerry Davis and Thompson.

After I came up to Corson I said, "I have been trying to get you for a long time, and now I have got you."

I did not make any recommendation to the United States District Attorney as to the sentence to be imposed upon Thompson. I knew that Mr. Thompson only received a sentence of 90 days. I didn't know that that was in return for his co-operation with me.

When these stamps were taken off of Thompson they were in his right outer jacket pocket. They were all together, and then they were folded up in a manner. They were folded in such a manner that the back of them was blank. That is to say, the outer portion of it did not show the T tickets. We did not at that time make any marks on these tickets. We didn't mark them. They had a mark on them where they appeared to be under a floorboard—a floor mat. That wasn't any mark that I made.

Thompson did not signal to me when he put these stamps in his pocket. We did not arrest or re-arrest Thompson. We [23] took him with us, but we did not re-arrest him. I did not say anything about re-arresting him at all at the time. I didn't have him. Investigator Taylor took him in. Investigator Taylor did not say, "I am arresting you," to my knowledge.

I at no time other than as I have described it, ever found any ration coupons in the actual possession of Mr. Corson during this case. Immediately after arresting Mr. Corson we searched his automobile. It was locked—we never did get into the back end of it because we would

(Testimony of John E. Foster.)

have to break in—it was quite an expensive automobile. We did not break into it. We searched the automobile, all except the back end, which we did not enter. We searched the lot after a fashion. We searched the automobiles that Mr. Corson had been driving.

We did not follow Mr. Corson's automobile for two or three days after that. We did not go into a parking lot on Spring Street and go through the automobile. At no time within my own actual knowledge or observation did I actually see Mr. Corson transfer over to Mr. Thompson or anyone else, anything other than what I claimed I saw, which was a group of papers—that package that he handed him was the only thing that I saw. We had been looking for Mr. Corson on a warrant, but I hadn't seen him prior to that day.

As to whether I couldn't see where Mr. Corson was in the lot until after I actually saw him talking to Thompson, [24] I saw him at all times. He went up to the back of the lot until Davis left, and then he came back down. Mrs. Thompson did not get out of the automobile to my knowledge, she never did. She was sitting all the time this was going on in Thompson's automobile, on the side street.

When we got Corson we took him into our car. He had at all times subsequent to that time denied that he had any irregular possession of any ration stamps. He had at all times subsequent to that time denied that he had ever transferred or signed any ration stamps illegally.



(Testimony of John E. Foster.)

Redirect Examination

By Mr. Carter:

On your direct examination you questioned me only about the second trip in which I followed Thompson to the lot on Sunset Boulevard. There were two trips out there. Went out the first time around 4:30, or quarter to five. We did search him at his car before he made that trip. He returned from that first trip probably ten minutes later, between five and ten minutes later. It did not take but a couple of minutes.

I again searched him and his car before he went the second time.

From the time that Thompson left on the first trip to go to 8801 Sunset he was out of my sight from that time on until Corson was arrested. He went in one place to eat and we went into another. That was prior to the second trip. [25] On the second trip he never was out of our sight from the time we searched him until we arrested Corson. While I was sitting outside of 8801 Sunset Boulevard I had an instrument with me to assist me in observing. I had binoculars. We used them off and on. I know what happened to the man who was with Corson when Corson drove on the lot. He jumped out of the car and ran when we grabbed ahold of Mr. Corson and Thompson. He jumped out of the car and ran.



(Testimony of John E. Foster.)

JOHN E. FOSTER

resumed the stand as a witness by and on behalf of the Government, and testified further as follows:

Redirect Examination

By Mr. Carter:

During the noon recess I made a diagram of the location out there at Sunset. This (indicating on black-board) represents Sunset Boulevard running east and west. This is east and this is west (indicating). This lot here—there is no fence or anything there, to the best of my recollection—is 8801 Sunset Boulevard. There is a little shack standing right there (indicating) that at the time was unpainted—that is, it was unpainted **then**, whether it is painted now or not I don't know. This (indicating) is a street running north and south. However, it doesn't come through on the south side of Sunset; it just goes north off of Sunset. I don't recall the name of this street. [26]

And this (indicating) represents Thompson's car where it was parked. This (indicating) represents the car that appeared there, which car Corson got out of, and the other man—they got out there—and the man who ran was also in this car, (indicating).

This (indicating) is the Davis lot, which is next door, just west of 8801 Sunset.

This (indicating) is the Thompson car, as I said, there. This is where Mrs. Thompson was seated in the car (indicating). This pulled in around here in this driveway and backed up a ways up the hill and pulled back down around slow and stopped just about even with the north side of the driveway coming into the lot. There was a

(Testimony of John E. Foster.)

car parked this side (indicating) across the lot here. It was a Ford convertible.

As well as I recall there was a chain of cars in front of this car that was parked inside of the lot. The car was parked inside on the lot and so that it would bar the driveway so that you couldn't get in.

Then there were other cars in there—I don't recall how many, but there were several other cars parked right along over to here (indicating) facing the street.

This (indicating) is the sidewalk running along through here.

And this (indicating) represents about where Davis was standing and where Thompson and Corson all stood right along [27] beside each other at the edge of the sidewalk—the lot, and then they walked back over across to here (indicating).

This (indicating) is where the transaction took place.

And then there was a bar here (indicating) and a few stores here—and there was a little sidewalk also along here (indicating), and these stores all opened up on it.

I believe those stores were all closed; I don't remember any of them being open except the bar. And there was a place for parking all around over here (indicating). And we pulled in and parked at the edge of the driveway, and our car was on a slight angle so that we were looking directly into the lot here (indicating).

This car pulled right at this end of the lot, and so that we could just barely see in front of those men and see this car parked on the driveway there.

We pulled out of here, pulled across the street almost diagonally across here and pulled in here (indicating)

(Testimony of John E. Foster.)

and headed towards where this car was (indicating). By that time these men were right along in here (indicating). As I pulled in they were walking towards me.

By Mr. Carter: At the place where your three crosses appear I am going to put the initials D. T. and C. (marking). That is where Davis, Thompson and Corson talked? A. That is right.

Q. And where the two crosses appear adjacent to the small shack I will put C. and T. [28]

A. Davis was also over there at one time.

Q. But for the purpose of identifying the chart it would be a different designation than the other one?

Mr. Lavine: I think it should show that Davis was also there at one time.

Mr. Carter: The record so shows, but if we put a D there we will have two places marked with the initials D, T and C.

Mr. Lavine: Put a cross for Mr. Davis.

Mr. Carter: All right. (Marking.)

Mr. Carter: In that case the cross indicates Mr. Davis. And the car parked at the south side of Sunset marked with an F and a T, for Foster and Taylor—the car that you were in—

The Witness: Right.

Mr. Lavine: We have already marked Thompson's car with a T.

Mr. Carter: As Thompson's car, yes. I think that sufficiently identifies the drawing.

#### Recross-Examination

By Mr. Lavine:

This was sometime around 6:30 in the evening. There

(Testimony of John E. Foster.)

was quite a bit of traffic on Sunset Boulevard. There was some traffic. I imagine it was the usual traffic on Sunset Boulevard around 6:30 in the evening. That was the only [29] time I stopped there. I would not say there was a steady stream of cars going by there. As a matter of fact, I did not pay much attention to the traffic there. The only thing I noticed was when we went across that—Mr. Taylor was driving the car and so he could tell you more about the traffic.

As to whether we stopped there a little while to let the traffic go by, I don't remember whether we made any stop to go across the street or not.

This distance across from this point where I was parked on across the street from Sunset Boulevard, over to the first point where I have marked D, T, C, or where Mr. Carter has marked D, T, C, I would say is 100 feet. Anyway, it is the width of Sunset Boulevard, plus the sidewalks on both sides.

They were right on the edge of the sidewalk. As to how far I would say that this point, referring now to the place where my automobile was parked, from the place where the two or three men were at 8801 Sunset Boulevard, I would say that was—it might be five or ten feet farther than the first, not more than 125 feet, giving it all the benefit of the distance.

As I recall there were cars on the Davis lot. There were cars on 8801 Sunset Boulevard, all over on the east side of the lot, however. There was this little booth or little house right on the west side of this lot at 8801 [30] Sunset Boulevard.



(Testimony of John E. Foster.)

I couldn't say how much of the time I was using binoculars. That is very hazy in my mind. I used them several times throughout the day. I used them also earlier in the day to see who was on the lot. And I couldn't say how much of the time—we probably used them during that time three or four times. I was using them to see if I could distinguish Mr. Corson on the lot. I don't recall trying to distinguish Davis, nor to see if I could distinguish Mr. Thompson on the lot, because it was broad daylight and we weren't far enough away to have to use them too much to distinguish anyone. The only time I used them was to try to determine what they had in their hands, but not to distinguish anyone. I had used them earlier on the day. I used them on the side street to see who was on the lot. I didn't know Mr. Corson had anything to do with the lot—I used them to see if Mr. Corson was there, around five o'clock. I used them around that time, probably five or ten minutes.

I had been waiting before Mr. Corson came up to the lot, probably five or six minutes. I don't recall whether I used the binoculars during that time or not. They are small binoculars. I couldn't tell you what kind they are. There is a stamp on it which says "Made in France." And that is all I can tell you about it.

I traded off with my associate officer in looking through these binoculars from time to time. I did not say [31] to him: "I think I see somebody on the lot now." I do not recall, because we could see over on the lot there. We might have said that, but not because of looking through the binoculars, because I could see them as well as I can see you now. As to whether he said while looking through

(Testimony of John E. Foster.)

these binoculars: "I think I see somebody there now," I don't recall such a conversation.

I was not looking through the binoculars at the time that I saw a paper passed from Mr. Corson to Mr. Thompson. I couldn't say whether my associate was looking through the binoculars at that time. I had my eyes glued on the transaction.

### Redirect Examination

By Mr. Carter:

At that time there were not any automobiles parked between the shack, which is marked on the diagram, and the sidewalk, there in front of it. Neither on the lot nor at the curb, to my knowledge. There was none that came in our vision.

As to whether, when Thompson went over in the location of the Davis lot, which is marked on the chart as D. T. C., and we turned back to the lot at 8801 Sunset, and whether he passed behind the shack, or passed on the side of the shack toward the sidewalk, he passed on the sidewalk—that is, between the sidewalk—I might explain that this shack doesn't come right down to the sidewalk. It is back a ways. And there [32] was no cars parked in here (indicating) because we went back later to get this car out of there, and moved it out of this (indicating on diagram) to this spot here. That was after the transaction. That car was in between here (indicating), between the shack and the sidewalk. Thompson was not ever behind the shack.

At no time did the traffic come between me and what I was looking at, so I would have no reason to particularly notice it.

As to the location of the car in which I was sitting,

(Testimony of John E. Foster.)

this is rather high, this place here (indicating on diagram). In fact, you come up here, and there is a rather mounted effect there, so that is a kind of a hill in here, so that where we were up here we were up high enough so that the cars were in our view, and none of the traffic stopped there, there were no lights there to stop any traffic. Any traffic that was there kept moving and did not slow down.

#### Recross-Examination

By Mr. Lavine:

That place is sidewalk height, referring now to this place (indicating on diagram), referring now to where my car was parked. It is a little higher than sidewalk height. As to whether this other side—this that was parallel across there, I couldn't say whether it was sidewalk height or not, but the view was good. I parked in such a way that I looked through the windshield. As to when I had last wiped the [33] windshield, I couldn't say; the car didn't belong to us, and I didn't wipe the windshield at all. I happened to be in the back seat, sitting right here (indicating on diagram), and I was looking out, and Mr. Taylor was in the front seat of the car, and he could look right straight out there (indicating), and I could look right straight out here (indicating). I didn't have to use the windshield. I was at one time in the front of the car and looked through the windshield, then I got out and moved into the back; right on the right hand side of the back seat. The car I was in was a little light Studebaker, two doors.

(Testimony of John E. Foster.)

Mr. Thompson I would say was approximately 50 years old. His wife I imagine was between 35—around 36, probably 40. I couldn't say she was a much younger woman—that would be just my guess—I would say she was younger, however.

With reference to where I was at the time I was sitting in the automobile. She was parked right—just in the street. As I said before, why, they pulled around here (indicating) and then they pulled around slowly so the front of their car was just about even with the north end of the driveway, but they didn't pull in the curb. She was still in the street.

The distance from this pont marked D. T. C., over to the end of the driveway here I would say that was 100 feet. It could be 150. I don't think it was, but—I don't know just how far—I imagine that 8801 would be 75 feet, say, and [34] they were about 25 or 35—25 to 35 feet inside of the Davis lot there from the imaginary line.

As to whether there were cars parked on both sides of this lot, well, there were automobiles parked—whether there were any parked up here or not, there were cars parked from here over (indicating), but not here (indicating on diagram). There were no automobiles in here. They parked down on this side of the driveway, right over there, and one of them was over here. Now, if there were any up here, I couldn't say. I couldn't say whether cars were parked on the Davis lot; I did not go into the lot.



## JONA H. TAYLOR

a witness called by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

## Direct Examination

By Mr. Carter:

I live at 5513 Mullen Avenue, Los Angeles. I am an investigator for the Office of Price Administration. I have been so employed just about a year. I worked for Mr. Foster on this case.

Referring to a man by the name of Edgar E. Thompson, the first time I saw Mr. Thompson was September 2nd. On that date Mr. Thompson was apprehended by Mr. Foster or me. After the apprehension of Mr. Thompson he was subsequently searched. That was done the first time when we arrested him. [35] He was searched again out on the street about two blocks from 8801 Sunset, on two different occasions. The first of those two occasions out near Sunset Boulevard was between 4:30 and 5:00. After he was searched their car and Mrs. Thompson were searched.

Thompson and Mrs. Thompson then drove down Sunset going east, and drove into the lot at 8801 Sunset.

No gasoline coupons were at any time found as a result of this search. That is, referring to the last two searches. Referring to the first search, coupons were found; at the time of the arrest; at the time of the arrest we found several sheets of coupons.

I saw Government's Exhibits 1, 2, 3 and 4 for identification. No sheets of that kind were found on Thompson at the time he was first searched after the arrest. When Thompson went to the lot at 8801 Sunset we followed him, immediately behind his car in the car in which we

(Testimony of Jona H. Taylor.)

were riding, and kept him in our vision at all times. He went in the lot and talked to one of the men on the lot. I saw Corson there at that time. He talked to Corson. I did not see anything pass between them at that time. No article. They didn't come in bodily contact at all.

He remained on the lot possibly five to seven minutes. Then he came out and drove away back to the point where we had searched him. We followed him back. He went back to the lot at 8801 Sunset a second time that evening, at about 6:30. [36] I again searched him before he went back, immediately before he went back. I also searched his car and Mrs. Thompson again. At that time she was still in the car.

Thompson then drove east on Sunset and drove in the driveway in the side street as Mr. Foster described, backing the car out, and headed back down the hill. Mr. Thompson got out of the car and walked across the edge of the corner of the lot and then to Mr. Davis' lot. As he walked past the front of 8801 Sunset he kept looking in and went on down to Davis. I observed him talking to Davis. No article of any kind passed between Davis and him.

Then Mr. Corson drove up then in the Cadillac convertible with the top down at or about the point that it is drawn in this (indicating diagram) to the driveway, with the front of the car on the sidewalk. I was in the car across the street in the driveway headed out. I was in the front seat, on the driver's side of the car, in the place marked on the chart F.T. After Corson drove in with the Cadillac Corson got out and walked over to where D. and C. are here on this drawing, and he talked to them

(Testimony of Jona H. Taylor.)

for a few minutes and then they came across to where X. C. T. is marked. That occurred in front of the shack. That would be between the shack and the sidewalk. Mr. Davis after two or three minutes went back to his lot. Nothing had passed between any of the boys up to that time.

Mr. Corson then reached inside the pocket of his sport [37] coat—he had on something similar to this one—reached inside of the pocket and took the papers out. They were long, as they were shown in the courtroom this morning. They were about 12 inches long and about 3 inches wide. He handed them over to Mr. Thompson at about this angle (indicating). Mr. Thompson started to reach inside of his jacket, and, as it was explained, it was a loafer jacket—what is referred to as a loafer jacket, and he started to reach inside and found he didn't have a pocket there and he then folded them over once and put them in this pocket (indicating). Right hand outside pocket.

As to whether Corson remained present at the same location after he had returned from the Davis lot, or had gone anywhere else, he started toward the back of the lot, and I think he walked probably fifteen or twenty feet toward the back of the lot, and left Davis and Thompson standing there. I don't think Corson went to any other building, or car, or any other place. I did not observe him going anywhere. He was out of my vision for possibly just a moment or two. It was after his return that I saw these papers.

This Exhibit, Government's Exhibit No. 1 for identification, I have seen that before. That is one of the sheets that was taken from Mr. Thompson's pocket.



(Testimony of Jona H. Taylor.)

Government's Exhibit No. 2 for identification is one of the similar sheets taken at the same time.

Government's Exhibit No. 3 for identification was the [38] outside sheet.

Government's Exhibit No. 4 for identification was a third of the size of the other sheets. I referred to one of these sheets as the outside sheet. I did notice some distinction or characteristic about that sheet. The fact that it had a mark on the back of the sheet which we thought came from under the floor mat of an automobile, similar to a mark that would come or occur in that way.

(Witness is asked to fold them up in the form they were in when he saw them passed from Corson to Thompson.)

They were in this position (indicating) when he took them out of his pocket—when he took them out and handed them to Thompson. Then Thompson folded them once, this way (indicating). First he started to put them in his pocket this way (indicating), but then he folded them this way (indicating), and put them in the right hand coat pocket.

Mr. Carter: May the record show that the witness described that the papers were first longways, and about 12 inches in length, and about 3 inches wide when they were taken out, and then folded crossways.

Mr. Lavine: Yes.

Mr. Carter: And may the record also show that there is a loose fold, and not a creased fold on either side.

Mr. Lavine: That is right. May we finish the description?

The Witness: It was folded like that (indicating). [39]

The Court: What is the length of that?



(Testimony of Jona H. Taylor.)

The Witness: 12 inches long by about 3 inches wide.

The Court: When he put it in his pocket how was it folded?

The Witness: Folded it once until it was about 6 inches long and the same width.

The Court: Double thickness.

The Witness: Yes, double thickness.

By the witness:

When I obtained those four sheets, Government's Exhibits 1, 2, 3 and 4 for identification from Thompson they were loose folds—they were all loose folds. The sticker tape on the back of some of it was not on at the time. They were put on by our office in order to preserve them. They had been handled several times, and they were loose, and there was danger of them coming apart—they were loose.

From the time Thompson was searched about 6:30 until the time I took the four sheets from him he was not at any time out of our vision. After I saw the four sheets pass from Corson to Thompson we immediately started the car and drove across Sunset on an angle diagonally, and around, and headed in the driveway. By the time we reached that point Mr. Corson and Mr. Thompson had already started walking, as we started the car toward Mr. Thompson's car, and they arrived at the point at the same time we did.

Mr. Foster came out on the opposite side from me and [40] grabbed Mr. Corson and put him in the car and I jumped in the driver's side, and reached in Corson's pocket and pulled the coupons out. By the "coupons" I mean Government's Exhibits 1, 2, 3 and 4.

(Testimony of Jona H. Taylor.)

I never did see what happened to the man who was in Corson's car. My vision at all times as much as possible was on Thompson and Corson, and I did not see what happened to the man. I saw him in there when Mr. Corson drove up, and I did not pay much attention to him.

### Cross-Examination

By Mr. Lavine:

I was not looking at the men with binoculars when I say I saw the papers pass from Mr. Corson to Mr. Thompson. I was sitting at that time in the driver's seat. Mr. Foster at the time was in the back seat.

The first time I drove up there—the first time that afternoon we drove up past there and searched Mr. Thompson between 4:30 and 5:00. Mr. Thompson was there when I made the search. We had him empty his pockets of everything, and then we reached in his pockets to see that he had no other papers of any type on him.

While I was making that search Mr. Foster and Mrs. Thompson and Mr. Thompson and I were talking, and at that time there was some discussion about him wanting to do everything he could to help, that he didn't want to leave his wife [41] alone. He did not then say that he was pretty much in love with her and that he wasn't going to be locked up any longer than he had to be. At that time he had not told me that he had been convicted of a felony three or four times. I don't remember now when he told me. I don't think he told us, I think we found that.

I made that first search out near 8801 Sunset, outside of his car, by the side of his car. He got out of the

(Testimony of Jona H. Taylor.)

car for the purpose of the search. Emptied his things in the car—his personal belongings. I think he laid them in the seat of the car, and afterwards put them back in his pockets.

After we finished the search of the car and Mr. and Mrs. Thompson we followed his car. I saw him go over to the lot between 4:30 and 5:00. At that time, at 4:30, I was parked across the street on the street itself. My car was headed east. His car was on the edge of the road, on the side street—he had pulled into the lot. I could see his car from where I was. Then I saw him go into the lot. Saw him talk to Mr. Corson immediately after he entered the lot. He remained there talking to Mr. Corson between five and ten minutes.

I saw someone else at the time. There were two other men. They were a little ways away from where Mr. Corson was seated in his car. Mr. Corson was seated in his car, and Mr. Thompson walked up to him, and Mr. Corson got out of the [42] car, and they stood there and talked, and the other men were back of them ten or fifteen feet. There were quite a number of cars on the lot. I would say between eight and twelve. I didn't observe any particular cars except the car that Mr. Thompson went over to, that Mr. Corson got out of at that time.

I did not look in the binoculars at that time.

Mr. Foster was out of the car on the sidewalk somewhere; I don't know exactly where it was.

I remained until Mr. Thompson left. Then I followed him again up to the point where we had searched him before. Then we parted at that point. We had a con-



(Testimony of Jona H. Taylor.)

versation then. We separated about ten minutes later. I was separated from Thompson at that time probably an hour. We met again possibly at six o'clock or a few minutes afterwards. At that time we met at the same point. Mr. Thompson was there first, he and his wife in their car. I drove up and I followed him over to the same point; we searched him first, just as we did before, and then followed him at that time over to the same point; saw him drive in the driveway as I have described before, and back up and come up the hill, and turn around and park there.

I did not see Mr. Corson there when he first drove up the second time. I saw Mr. Davis. Mr. Davis was on his lot. I did not see some other men there at that time. After the defendant drove up I then used the binoculars again, the one [43] time—that is the one time I did use the binoculars. I call them field glasses, they were the ordinary small type binoculars. I adjusted them to my eyes.

As to whether I made out the form of Mr. Corson through the glasses, I didn't need to make out his form through the glasses. I had them adjusted already. We had during the afternoon focused and used them. I had traded with Mr. Foster. As to whether I made any re-adjustment after Mr. Foster handed them back to me, if so, it was so slight that I didn't even notice it. I did not look for a full minute through those glasses—just thirty seconds, at Mr. Corson. At no time could I distinguish that something was being passed from Mr. Corson to Mr. Thompson. You could tell it wasn't a book or a magazine. You could tell that at a distance of 125 feet. You



(Testimony of Jona H. Taylor.)

could see that it wasn't a book. It could have been a light magazine, probably—it was loose paper—but it didn't look like any book or anything like that. We could see very plainly.

I saw Mr. Thompson put something in his right coat pocket. I saw him also reach back into the inside of his pocket with the paper in his hand. That occurred on the 8801 Sunset lot. As to how far back from the sidewalk the men were standing at the time, I would say ten feet, not over fifteen feet.

Then I drove immediately across the street at that time. There was very little traffic at that time going by. [44] I did not stop for any. From the time I left this lot across the street I did not stop until we got over there. My motor was not going at the time I made this observation. It was stopped. I started it immediately. I guess my automobile had the gear shift on the steering wheel. I shifted into gear and then went across the street. When I got over there I stopped my car and stopped the motor when I got out; just as the car started I switched the motor off and had the door open and got out.

Mr. Foster was out first. I heard him say something to Mr. Corson. I did not hear him say, "Now, I have got you." He said, "I have been looking for you for a long time. At last we have got you. And Mr. Corson replied that he did not know what he was talking about, something of that nature. I think he said, "Well, who are you?" Or something to that effect,—something that at the time did not seem to have much bearing on it. He said, "What's the matter?" Or something like that.

Juror Carter: Is there an elevation on the south side of Sunset?

(Testimony of Jona H. Taylor.)

The Witness: As I recall the water runs down there.

The Court: It is a rather high sidewalk, then?

The Witness: It is a very high sidewalk, and the road itself is up a little bit higher than the sidewalk, too. It is a very steep incline going up there.

The Court: How far west on Sunset is that? Is that [45] between LaBrea and—

The Witness: No, that is out on the county strip.

Juror Carter: On the cafe strip.

The Witness: Yes.

Mr. Carter: That will be all.

At this time I offer in evidence Government's Exhibits 1, 2, 3 and 4 for identification.

Mr. Lavine: To which we object on the ground heretofore given.

The Court: The objection is overruled and they will be received in evidence.

(The jury excused.)

The Court: All right. Let the record show the jury is out. All right.

Mr. Lavine: At this time, if your Honor pleases, the defendant moves for a directed verdict. The government has not established all of the elements of the information as charged here. They have failed to show any guilty or unlawful possession of these stamps. They have failed to show any violation of the regulation. They have failed to show that the particular charges as alleged in the information here have been violated. One of the allegations of the complaint, your Honor, Count 1, alleges that Lester Arthur Corson did knowingly, wilfully, and unlawfully have in his possession 800 gasoline ration coupons. They have not met that charge, your Honor. They have

(Testimony of Jona H. Taylor.)

not proved that he wasn't [46] lawfully in possession of these stamps. The same with Count 2.

The Court: All right.

Mr. Lavine: That is our motion.

The Court: All right. Mr. Carter.

Mr. Carter: I was interested in the last part of counsel's motion. I think counsel raised some question about the fact—Might I ask you to state that last part of your motion again? I heard the first part.

Mr. Lavine: There has been no proof offered here that the defendant was not in lawful possession of these stamps.

Mr. Carter: I don't think that the government is compelled to bring in every possible ration board in the country who might have issued stamps, and the burden is left upon the defendant to explain the possession of the 800 double TT stamps, if he lawfully was in possession thereof. Obviously, the only type of proof the government could offer on an issue of that kind would be to bring in every ration board in this State or, for that matter, in the United States, to prove that the government had not issued ration stamps to this individual. I submit the government has made out a case.

Mr. Lavine: Your Honor, in the recent case of Topp here, they sought to raise a presumption which was held to be unlawful—

The Court: There is no evidence of an act of presumption here. I take it, as a matter of fact, that those coupons [47] can be acquired only by persons engaged in transportation. And the evidence does not show he was engaged in transportation, and therefore it is sufficient.

(Testimony of Jona H. Taylor.)

Mr. Lavine: We haven't established in what business the defendant was engaged.

The Court: They showed that he was in possession of the lot. Suppose you found on me coupons of the type that is issued to a person engaged in a transportation business. The very fact that I am not engaged in it is sufficient to show that I am not entitled to the possession. Here a man is shown to own a lot where he deals in second-hand automobiles, and you, in fact, brought out the fact that he bought an automobile from this man, and there is no evidence whatsoever that he is engaged in any business that will entitle him to have gasoline coupons as though he owned a fleet of trucks. There is no presumption there. It is clearly shown there that he is not entitled to have that.

Suppose that you have a man who is supposed to have an A card and he has a T card. Here we have the case where a thief broke in the window in Hollywood and I held that where you found them in his possession, and he is shown by competent evidence that he was not engaged in that business but in another business, that is sufficient for a prima facie case. In other words, when you have a regulation, you have an exception. The government doesn't have to prove the exception. So he has to show that he is not of that class. And they have already shown that he is not of that class. [48]

Congress has given them the power to make those regulations. So when he is found with a T card and is shown to be engaged in operating a car lot, that is sufficient for a prima facie case.



(Testimony of Jona H. Taylor.)

Mr. Lavine: Exception.

The Court: The motion for a directed verdict will be denied.

Mr. Lavine: Exception.

Mr. Lavine: Now, at this time, your Honor, we move to strike the testimony of the witnesses Foster and Taylor as to all the conversations which they claim to have had with Thompson outside the presence of the defendant.

Mr. Carter: It was all brought out on cross-examination, your Honor.

The Court: There is no testimony offered as to any conversation outside of the presence of the defendant. All that was brought was what you brought out on cross-examination as to how he came to be there. They were very cautious, even omitting the first conversation, and then you brought out the fact that he had agreed after his arrest that he would go to the place and keep this date. And as long as you brought it out they had a right to amplify it. So that motion will be denied.

Mr. Lavine: Exception.

The Court: All right.

Mr. Lavine: And then I again renew my motion as to [48-a] an election as to the counts, your Honor.

Mr. Carter: We will elect to stand upon the transfer [48-b] count, your Honor.

The Court: Count 2?

Mr. Carter: If that is the transfer count.

The Court: All right. Then the government will elect Count 2, and Count 1 will be dismissed. Yes. That is the transfer count.

Mr. Lavine: That is right.

(Testimony of Jona H. Taylor.)

The Court: All right. We will take a short recess, and then I will call the jury and we will go on.

(Recess taken.) [49]

The Court: Let the record show the jury in the box.

Gentlemen of the jury, as a result of certain legal discussions between Court and counsel the issue in this case has been simplified, and the case is now before you only on Count 2, and that is the count which charges the defendant with having transferred ration coupons, and the Count 1, which charged him with possessing them, has been eliminated. So there is only one count left in the information. All right, Mr. Lavine.

Mr. Lavine: At this time, if your Honor please, we offer the file in Case No. 16220, United States District Court, United States of America, vs. Edgar E. Thompson, in evidence by reference.

Mr. Carter: No objection. I don't think it is material, but if counsel wants it in the record, what happened to Mr. Thompson, no objection.

The Court: If there be no objection, I will allow it in. Mr. Thompson is not a witness—I can't see—

Mr. Lavine: Well, it shows that the defendant was going to plead guilty to counts—

The Court: (Interposing) You are then going to compel me to tell the jury what the maximum is that is allowed. If the maximum is ten years and he gets three months, it is one thing, so I warn you if you put that in I

(Testimony of Jona H. Taylor.)

will instruct the jury what the penalty is that could be imposed in that case.

Mr. Layine: That is satisfactory. I wish your Honor to [52] do that. I want all the facts before the jury.

The Court: That is a fact. Ordinarily you can't refer to penalties, but so the jury will understand whether it was lenient or not, I will have to tell them what penalties could have been imposed on each count. With that understanding it will be received.

Mr. Layine: All right. We want the record to show that Edgar E. Thompson pleaded guilty to Counts 1 and 2 on an information charging five counts, and he was sentenced to 90 days in jail, on each count, Counts 1 and 2 to run concurrently, and the case was dismissed as to him as to Counts 3, 4 and 5.

And we want the record further to show that as to Count 1, he was charged on September 2, 1943, in the City of Manhattan Beach, in the County of Los Angeles, with possession of 766 type TT gasoline ration coupons, 152 type B coupons, gasoline ration coupons; 216 type C gasoline ration coupons, in violation of ration order 5-C.

In Count 2 he was charged on June 27, 1943, with being in possession in Manhattan Beach within this jurisdiction of 32 type C gasoline ration coupons, and having transferred them—that is an incorrect statement, your Honor. The statement is that on June 27, 1943, in Manhattan Beach he transferred unlawfully to A. F. Thomp-

(Testimony of Jona H. Taylor.)

son 32 type C gasoline ration coupons in violation of ration order 5-C.

In Count 3, on July 6, 1943, in Manhattan Beach, he unlawfully [53] transferred and assigned to A. F. Thompson 48 type C gasoline ration coupons in violation of ration order 5-C; and on August 27, 1943, in Manhattan Beach, he did unlawfully transfer to Luxton Arneson 80 type C gasoline ration coupons in violation of ration order 5-C.

And in Count 5, that on July 1, 1943, in Redondo Beach, he unlawfully transferred 32 type C gasoline ration coupons in violation of ration order 5-C.

The Court: Ladies and gentlemen of the jury in view of the testimony I will state to you that the maximum penalty provided for any such violation which could have been imposed by the Court against Mr. Thompson is one year, and/or a fine of—where is that?

Mr. Lavine: \$10,000, your Honor.

The Court: And/or a fine of \$10,000.

Mr. Lavine: On each?

The Court: On each of the counts. And that the only object of going into this question is to show whether Mr. Thompson in whatever he did may have been influenced by what might possibly be done to him if he assisted the officers. All right.



## LESTER ARTHUR CORSON

called as a witness in his own behalf, having been first duly sworn, was examined and testified as follows: [54]

## Direct Examination

By Mr. Lavine:

My name is Lester Arthur Corson. In the latter part of August, 1943, of this year I was in the used car business, 8801 Sunset Boulevard in the City of Los Angeles. In the latter part of August, 1943, I had some business transaction with a man named Thompson. We bought a Buick convertible sedan from the gentleman. \$1,895.00, I think the full price of it was. The car was shipped in, or driven in, from New York, and he couldn't supply the bill of sale from New York, and the car is still tied up, and we haven't got a clearance as yet.

Mr. Thompson had been on the lot several times during the time we had the first transaction and afterwards, he has been on the lot. He has sold a couple of cars for us, and in fact I bought two more cars from him.

In connection with this transaction I told him about getting the clearance and he said he had to write to New York to Paul Douglas and would have to get a bill of sale notarized back there, and he hasn't done it up to this time.

During the last part of August, a day or two before September 2nd, I had occasion to see Mr. Thompson. He was in there a couple of days before that, and I told him to either take his car back or give me a bill of sale on it. And at that time he took the car out and used it—was going to floor the car. That is, some used car dealer was [55] going to refinance it, because he had our money and he hadn't given any clearance on the car, and there is no clearance on it to date.

(Testimony of Lester Arthur Corson.)

On September 2, 1943, he came on the lot with another automobile—him and his wife—another Buick, convertible Buick, and asked me if I wanted to buy it, and I told him I did if we would get the right price. And he was asking \$2,000.00 for it, and I told him I would give him \$1,800.00 for it. That conversation was I would judge about four o'clock, maybe 4:30, and we talked for quite a while about this car; and another car. He said he would drop back later on, and have a talk with his wife first and see if he could sell the car for \$1,800.00. In fact, I would have given him \$1,850.00 for the car. Then he left the lot.

At that time he didn't say anything to me about any ration stamps. I did not say anything to him about any ration stamps

Prior to that occasion when he had been in the lot a few days before, or a short time before that, he tried to sell me rationing stamps. We had a 1942 radio in a Cadillac and he said that he would trade me some rationing stamps for that—he got it to, I think, \$80, and he finally came back and paid the cash instead of the stamps.

I told him I wouldn't care for any stamps.

Then, on September 2nd, after he left at 4:30 or thereabouts, he said that he would discuss the sale of this other [56] automobile with his wife and let me know about the car. That is what we were talking about on the lot. He was talking to Jerry Davis, and myself and him, and whether or not Jerry Davis was going to buy the car or I would buy it. And Jerry wasn't in position to handle the car at that time. He thought it was too much money. And so I offered him a deal, and he didn't go through

(Testimony of Lester Arthur Corson.)

with it. And that is what we were talking about on the lot.

We met about, I would say, about 6:30 or so that afternoon or evening, and he still wanted \$1,900 for the automobile, and so we met on the lot, and we were talking about it, and we were walking across the lot, and he told me something about he had something in the car that he had bought, and he wanted to get something out of the automobile, and I didn't pay any attention to him, I kept on walking, and as I got to the end of the lot these officers popped up.

He walked over toward the other automobile that was on the lot and opened the door and then he turned around real quick and followed me over there.

I did not at any time transfer or assign any gasoline ration coupons to him. I did not at any time transfer 800 type TT gasoline coupons. I did not go anywhere into my lot and get any 800 TT gasoline ration coupons.

The first time I saw that batch of gasoline ration coupons that they claimed I had was when he pulled them out of his right hand pocket. I never saw the tickets up until [57] that time. He did show me a pink and white slip on the car that was sitting in the street, and I told him it was too much money, and I handed him the slips back. He handed me a white and pink slip on the car, and told me he had the pink on it and if I would give him the cash for it—because we had some trouble on the other car—and he showed me the pink and white on it, but I told him it was too much money.

The car was sitting at that time in the street, and I was walking over toward it to look the car over when the officers drove up.



(Testimony of Lester Arthur Corson.)

The former car was sitting on the first line of cars along, I think it was about the third or fourth car from the driveway. When he had been on my lot the day before, he had not done anything with reference to the car. He had taken the car and he wanted to try to take it out to sell it to somebody else because I hadn't had the clearance on the car, and he was trying to get the money to pay me back.

He always goes to that car, and he liked the car himself and wanted the car back, but so long as we was after him for the clearance on the car, and he said he would buy it back, that that would recover the automobile, and he would like to have it back.

Across Sunset Boulevard from this lot I would say it is 100 feet, maybe 125 feet—most likely 100 feet from where the officers said they were standing to my lot—it would be about 110 or 115 feet. [58]

I did not pay any particular attention to anyone that was coming in or going out there on that afternoon.

There was no chain across my lot. We have no chain on the lot even now. My lot is not watched or guarded at night. It is never guarded. Nobody is there at all at night.

In connection with my transaction with Mr. Thompson that has not even been cleared today, that car. I have all the papers on it, but we are waiting for a bill of sale from New York, and it seemed that the car belonged to Paul Douglas, and he is an announcer across the Seas and we can't get a bill of sale from him.

I have had occasion to talk to Mr. Thompson subsequent to my arrest, on this occasion I talked to him up



(Testimony of Lester Arthur Corson.)

here in this building where he appeared in Court. After his arrest. He said that he had spent 25 years in prison of his life, and he didn't want to spend any more, and he was kind of ashamed of what he had done to me, but that was the only way out. He said he was very much in love with his wife and didn't want to go back to prison again. He figured he would be a four or five-time loser and he would get life—that is what he told me.

### Cross-Examination

By Mr. Carter:

I did not know that Thompson had a prior conviction before this date that he told me this in the Federal Building. I did not know that before. All I know about that is [59] what he told me on that date. I have no evidence of it. He told me he was going straight—when we bought the car. When he told me that here in the courtroom I didn't pay much attention to that. I don't attach much significance to that now.

I am a used car salesman. I am not in the trucking business. I never had issued to me by any Rationing Board Government's Exhibits 1, 2, 3 and 4. I don't claim to have any right to the possession of these.

On that lot that evening Mr. Thompson handed me a pink slip on this particular automobile and I handed it back to him. I did not take something out of my inside pocket. The only paper I had was when he handed me the pink and the white slip, and I handed it back to him.

Q. Who is engaged in business with you on this lot?

Mr. Lavine: I believe that is incompetent, irrelevant, immaterial and not proper cross-examination.

(Testimony of Lester Arthur Corson.)

The Court: That is all right; he has referred to the transactions, which may be inquired into.

The Witness: You want to know the name?

Q. By Mr. Carter: Yes.

A. Louis Vatagliano.

By the witness:

I work for Louis Vatagliano. I have been associated with Louis Vatagliano about three months.

Thompson came to my lot at 4:30 in the afternoon of [60] September 2nd and stayed about ten minutes left, and came back at 6:30. I talked to him on both occasions.

The investigator run up to Thompson and walked right up to him and took the papers out of his pocket. I wasn't watching completely what he was doing. I saw the gentleman rush up and take some papers. Whether he had them in his hand or his pocket, I don't know. Later on the papers were not opened up. This was the first time I ever saw the papers opened up, was right here. These men did not tell me who they were, or that they were from the OPA. He said: "My name is Jack Foster." That is all he said. I do not know who Jack Foster is. I don't remember. I knew at that time, I heard his name mentioned.

Q. By Mr. Carter: Mr. Corson, have you previously been convicted of a felony?

The Witness: No, sir—

The Witness: I have been up on a liquor charge one time, but—it probably was—I don't know whether it was a felony or not—it was a liquor violation.

Q. By Mr. Carter: Weren't you convicted of a felony in the State of Washington along with Mr. Paul Wessell?

(Testimony of Lester Arthur Corson.)

A. I don't know; it might be, a number of years ago—I don't know whether it was a felony.

(The following proceedings took place at the bench out of the hearing of the jurors.)

Mr. Lavine: It appears from the document that the [61] defendant was placed on probation, and sentence was suspended, and that he was then placed in charge of the parole officer of the State Reformatory.

The Court: You don't have any expunging—it would have to be a felony in the Federal Court.

Mr. Lavine: That would be a juvenile.

The Court: An offense is sufficient in the Ninth Circuit.

Mr. Lavine: I understand it would have to be a felony in that State.

The Court: As a matter of fact he should be asked if he has been convicted of an offense—the record will show what it was. He answered he didn't know. If you want me to give instructions, I will—the only thing is that it will affect his credibility as a witness, that is all.

(Proceedings before bench concluded.)

Mr. Carter: (To Clerk) Mark that for identification.

The Clerk: 5 for identification.

Q. By Mr. Carter: I show you a photostatic copy of a judgment and sentence in the State of Washington and ask you to look that over. Read it.

A. I never denied being there.

The Court: That isn't the point.

Now, do you still quibble? Are you the man mentioned in that commitment? [61-a]

The Witness: Yes.

The Court: All right.

(Testimony of Lester Arthur Corson.)

Mr. Lavine: May the record show that I object to it as incompetent, irrelevant and immaterial, no foundation laid and prejudicial conduct. I realize that the Ninth Circuit has so ruled, but I want my objection in the record.

Mr. Carter: At this time I offer in evidence Government's Exhibit 5, which has been marked for identification.

Mr. Lavine: To which I object as incompetent, irrelevant and immaterial; no proper foundation.

The Court: Is that a certified copy?

Mr. Carter: An exemplified copy.

The Court: Exemplified by the Clerk of the Court?

Mr. Carter: Clerk and Judge.

The Court: Clerk of the Superior Court of King County?

Mr. Lavine: I object to it, and the prejudicial misconduct.

The Court: Objection overruled.

Mr. Lavine: Exception.

The Clerk: Government's Exhibit 5 in evidence.

Mr. Carter: That is all.

Redirect Examination

By Mr. Lavine:

Q. Mr. Corson, how old were you in 1923—20 years ago? A. 26. [61-b]

Q. And in this charge you were—the sentence in that matter was suspended, wasn't it? A. Yes.

Q. And it was a sentence to a reformatory?

A. That is right.

Q. Which was suspended? A. Yes, sir.

The Court: I think there should be a statement to the jury of the nature of the offense. Nobody has said what



(Testimony of Lester Arthur Corson.)

he was charged with. Either the entire thing should be read—(document handed to Court). He was charged with grand larceny?

Mr. Carter: I will make a statement to the effect that Mr. L. A. Corson, who defendant admits is he, was convicted on August 21, 1923, in the Superior Court of the State of Washington, in and for the County of King of the crime of grand larceny; and judgment was entered that he be punished by confinement at the reformatory of the State of Washington at Monroe for the term of not less than one year and not more than fifteen years. "It is further ordered that this sentence be suspended during the good behavior of said defendant L. A. Corson and until the further order of the court, and the defendant is placed in charge of the parole officer of the State Reformatory at Monroe, Washington." Dated the 23rd day of August, 1923.

The Court: Gentlemen, I might as well tell you now that the fact of a previous conviction is offered merely to [61-c] impeach the defendant as a witness because that is one of the methods in which the defendant's credibility as a witness may be impeached. It is not to be considered as evidence from which an inference of guilt in this case may be drawn. It is merely offered for whatever consideration you may give it as to his credibility as a witness.

(Both sides rest.)

Mr. Lavine: Defendant rests.

Mr. Carter: No further evidence on the part of the Government.

Mr. Lavine: I renew the motion for the directed verdict as heretofore given.

The Court: Motion will be denied.

(Argument of counsel follow:)

The Court: Gentlemen, of the jury I am about to instruct you as to the principles of law which you are to apply as the jury in the case. The instructions are not very lengthy. They have all been written out and I shall read them to you carefully and distinctly, and if you desire, when you go into the jury room to deliberate, the [61-d] instructions which will be filed with the Clerk as they have been read to you, they will be sent out to you, and you also have the right to have any of the exhibits brought to you during your deliberations.

The law of the United States permits a judge to comment on the facts in the case. Such comments are mere matters of opinion which the jury may disregard if they conflict with their own conclusions upon the facts. This for the reason that the jurors are the sole and exclusive judges of the facts in each case. However, it is not my custom to exercise this right nor shall I exercise it in the present case. I shall leave the determination of the facts in the case to you, satisfied as I am that you are fully capable of determining them without my aid. However, it is the exclusive province of the Judge of this court to instruct you as to the law that is applicable to the case, in order that you may render a general verdict upon the facts in the case, as determined by you, and the law as given to you by the Judge in these instructions. It would be a violation of your duty to attempt to determine the law or to base a verdict upon any other view of the law than that given you by the court,—a wrong for which the parties would have no remedy, because it is conclusively presumed by the court and all higher tribunals

that you have acted in accordance with those instructions as you have been sworn to do.

You are here for the purpose of trying the issues of [62] the fact that are presented by the allegations in the information and the plea of the defendant thereto. This duty you should perform uninfluenced by pity for the defendant or passion or prejudice on account of the nature of the charge against him. You are to be governed, therefore, solely by the evidence introduced in this trial, and the law as given you by the Court. The law will not permit jurors to be governed by mere sentiment, conjecture, sympathy, passion or prejudice, public opinion or public feeling. Both the public and the defendant have a right to demand, and they do so demand and expect, that you will carefully and dispassionately weigh and consider the evidence and the law of the case and give to each your conscientious judgment; and that you will reach a verdict that will be just to both sides, regardless of what the consequences may be.

The offense with which the defendant is charged is:

Violation of Section 1394.8177 Ration Order 5C.

In this connection, you are instructed that the information on file herein is a mere charge or accusation against the defendant, and is not any evidence of the defendant's guilt, and no juror in this case should permit himself to be, to any extent, influenced against the defendant because or on account of such information on file.

It is the duty of the jury to decide whether the defendant be guilty or not guilty of the offense charged, considering all the evidence submitted to you in the case. [63]

The jury are the sole and exclusive judges of the effect and value of the evidence submitted to you in the case.



The jury are the sole and exclusive judges of the effect and value of the evidence addressed to them and of the credibility of the witnesses who have testified in the case, and the character of the witnesses as shown by the evidence, should be taken into consideration, for the purpose of determining their credibility and the fact as to whether they have spoken the truth. And the jury may scrutinize not only the manner of witnesses while on the stand, their relation to the case, if any, but also their degree of intelligence. A witness is presumed to speak the truth. This presumption, however, may be repelled by the manner in which he testified; his interest in the case, if any, or his bias or prejudice, if any, against one or any of the parties, by the character of his testimony, or by evidence affecting his character for truth and honesty or integrity or by contradictory evidence; and the jury are the exclusive judges of his **credibility**.

A witness may also be impeached by evidence that he made, at other times, statements inconsistent with his present testimony as to any matter material to the cause on trial; and a witness may also be impeached by proof that he has been convicted of an offense.

A witness false in one part of his or her testimony [64] is to be distrusted in others; that is to say, the jury may reject the whole of the testimony of a witness who has wilfully sworn falsely as to a material point; and the jury, being convinced that a witness has stated what was untrue, not as a result of a mistake or inadvertence, but wilfully and with the design to deceive, must treat all of his or her testimony with distrust and suspicion and reject all unless they shall be convinced that notwithstanding



ing the base character of the evidence, that he or she has in other particulars sworn to the truth.

The law does not require any defendant to prove his innocence, which in many cases might be impossible, but on the contrary, the law requires the Government to establish his guilt and that by legal evidence and beyond a reasonable doubt.

The presumption of innocence goes with the defendant throughout the whole trial, even till the verdict is rendered, and this presumption of innocence outweighs and overbalances all suspicions and suppositions, and can only be destroyed by proof beyond a reasonable doubt.

If you can reconcile the evidence before you upon any reasonable hypothesis consistent with the defendant's innocence, you should do so, and in that case find the defendant not guilty. You cannot find the defendant guilty unless from all the evidence you believe him guilty beyond a reasonable doubt. [65]

A reasonable doubt is a doubt based on reason, and which is reasonable in view of all the evidence. And if, after an impartial comparison and consideration of all the evidence, or from a want of sufficient evidence on behalf of the Government to convince you of the truth of the charge, you can candidly say that you are not satisfied of the defendant's guilt, you have a reasonable doubt; but if, after such impartial comparison and consideration of all the evidence you can truthfully say that you have an abiding conviction of the defendant's guilt, such as you would be willing to act upon in the more weighty and important matters relating to your own affairs, you have no reasonable doubt.

Reasonable doubt is not a mere possible doubt; because

everything relating to human affairs, and depending on moral evidence is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge.

While the defendant in a criminal action is not required to take the stand and testify, yet if he does so, his credibility and the value and effect of his evidence are to be weighed and determined by the same rules as the credibility and effect and value of the evidence of any other witness and the tests for determining credibility of witnesses as given you, in another part of the instructions, are to be [66] applied to his testimony alike with that of all other witnesses.

In this case, there is evidence that the defendant has been previously convicted of an offense.

This is not to be considered as evidence of his guilt of his present offense. It is merely offered to impeach the defendant as a witness.

Notwithstanding such conviction, you may, if his testimony carries conviction to you, give it full credence.

There are two kinds of evidence by which the Government may sustain the charges laid in an information---the one is known as direct and positive; the other, as indirect or circumstantial. Evidence is said to be direct and positive when the witnesses have testified of their own knowledge to matters having a direct bearing upon the issues in the case. Evidence is said to be indirect or circumstantial on the other hand, when the witnesses testified to matters having only an indirect or circumstantial relationship to the issues in the case.

The law requires that all the circumstances necessary to show guilt must, themselves, be shown by evidence beyond a reasonable doubt; that these circumstances must all be consistent with a defendant's guilt and that they must all be inconsistent with any reasonable theory or hypothesis except that of guilt.

If the circumstantial evidence measures up to all the [67] foregoing requirements, it is the duty of the jury to return a verdict of guilty. If it fails to do so, in any one of such particulars, your verdict should be not guilty.

Any person who wilfully performs any act prohibited or wilfully fails to perform any act required by any provision of the Second War Powers Act, or any rule, regulation or order issued thereunder, shall be guilty of an offense.

Ration Order 5C is a rule, regulation or order issued under and pursuant to the authority contained in the Second War Powers Act.

Section 1394.8177 of Ration Order 5C reads in part:

"(b) No person shall transfer or assign and no person shall accept a transfer or assignment of any coupon book or any bulk, inventory or other coupon (whether or not such book was issued as a ration or as part of a ration book) or other evidence, except in accordance with the provisions of Ration Order No. 5C."

The word "assign" is defined as "to transfer or make over to another, especially to transfer to, and vest in certain persons called assignees, the property in question. To "transfer" in law is the conveyance of right, title or property, either real or personal, from one person to another.



It is incumbent upon the government to prove beyond a reasonable doubt that the defendant on or about September 2, 1943, in the County of Los Angeles did knowingly, wilfully, [68] and unlawfully assign and transfer 800 type TT gasoline ration coupons, that they were valid coupons issued by a rationing board of the United States, and that he transferred them to Edgar E. Thompson, in a manner other than in accordance with Ration Order 5C, as amended, and as again amended. The Government must prove the charges strictly as made. If you have a reasonable doubt as to the proof of any of these elements, or if the Government has failed to prove any of **them, beyond a reasonable doubt**, you must acquit the defendant of Count Two of the Information.

Doing or omitting to do a thing knowingly and wilfully implies not only a knowledge of the thing, but a determination with a bad intent to do it, or to omit doing it.

The word "wilfully" denotes an act which is intentional or knowing, or voluntary, as distinguished from accidental. But when used in a criminal complaint, it is generally meant an act done with a bad purpose. The word is also employed to characterize a thing done without ground for believing it is lawful, or conduct marked by careless disregard whether or not one has the right so to act.

You are instructed that mere association whether through business transactions or otherwise, of one person with another who may be engaged in the violation of law does not make the person so associating guilty of crime.

Your first duty on retiring to your jury room to begin



your deliberations of this case will be to select one of [69] you to act as foreman.

The jury in a Federal Court is known as a common law jury, that is, both in civil and criminal cases it requires unanimity to reach a verdict. In other words, all twelve of you must agree before any verdict can be returned.

For your assistance the Clerk has prepared a form of verdict which is entitled: "In the above-entitled court and cause. We, the jury in the above-entitled cause find the defendant, Lester Arthur Corson, ..... as charged in the second count of the Information. Los Angeles, California, November ....., 1943. .... Foreman of the jury."

If you find the defendant guilty, you will insert the word "guilty" in the place indicated thereon. And if you find the defendant "not guilty", you will insert the words "not guilty" in the place indicated.

Are there any exceptions to the charge as given by the Court?

Mr. Lavine: Yes, your Honor, the defendant excepts to that portion of the charge that any regulation or rule that is advanced by an administrator of the ration order under the War Powers Act, is a violation of law as we have heretofore argued, as a matter of law. That instruction as to the "Second War Powers Act" as to any rule or regulation or any statement under it, and especially Ration Order 5C. We contend that since this regulation, as amended, and as [70] subsequently amended, was at the election of an administrator, and was not in effect at the time the Second War Powers Act was passed; that that does not constitute a violation of law, and we except

to those portions of the instructions on those grounds.

And we therefore say that it would be an unconditional delegation of the powers of Congress to enable such an administrator or board to create a crime by executive order.

The Court: A portion of those instructions were taken from the instructions you yourself proposed, Mr. Lavine.

Mr. Lavine: Not that one that I am referring to, your Honor. The one I am referring to now is one that your Honor gave from the Government's instructions.

The Court : The portion of the definition of the section about Ration Order C, is that what you mean?

Mr. Lavine: That is it. Exception noted.

The Court: All right.

Gentlemen of the jury, it is the right of either party to except to instructions given by the Court, and it must be done in open Court in criminal cases, in the presence of the jury, and the idea is that Courts may be in error, and the only way to call the error to the attention of the Court is to do it right at the time.

However, the point raised by Mr. Lavine has already been ruled on by me, and I shall not modify the instruction in any manner at all following his suggestions. You are [71] instructed that the instructions that I have given you stand as given, as I read them to you.

All right, the Clerk will swear the bailiffs.

Juror No. 2: Could I ask the counsel for the Government one question?

The Court: No, you cannot. No intimation of un-

constitutionality enters into your considerations. I have already considered that it is constitutional law, so that any statement he made to me I wouldn't allow him to argue that, but any statement he made is merely a statement that is addressed to me. You have no right to determine whether a law is constitutional or not.

Juror No. 2: No, it was not that, your Honor.

The Court: It is not permissible to ask any question of counsel. They are not under oath and they cannot answer questions as a witness would. Swear the bailiffs.

(Bailiffs sworn.)

The Court: You will now be taken in charge by the officers in the Court and begin your deliberations in the case.

(Jury retires.)

The Court: Gentlemen, we will stand at recess until we hear further from the jury.

(Recess taken.)

The Court: Let the record show the defendant in Court with counsel and the jury has returned to the [72] courtroom.

Gentlemen of the jury, have you arrived at a verdict?

The Foreman: We have.

The Court: Will you hand the verdict to the bailiff, who will hand it to the Clerk.

The Clerk will read it.

The Clerk: "In the District Court of the United States, Southern District, United States of America' vs. Lester Arthur Corson, No. 16260-Criminal. We, the jury in the above-entitled case, find the defendant, Lester Arthur Corson, guilty as charged in the second count of

the Information. Los Angeles, California, November 5, 1943, Ralph B. Ottun, Foreman of the jury."

So say all of you, gentlemen?

(The jury indicates assent.)

Mr. Lavine: Poll the jury, your Honor.

(Jury polled.)

The Court: The Clerk will enter the verdict. [73]

(The following instructions were requested by the Defendant and refused by the Court.)

Defendant's Instruction No. 1.

You are instructed that if you find the defendant guilty of any offense you can find him guilty only of one of the two counts since the act of selling and transferring gasoline coupons necessarily involves possession of them.

Defendant's Instruction No. 2.

The defendant is entitled to the benefit of a reasonable doubt as to each count in the information as though it were a separate and distinct information. It is incumbent upon the government to prove beyond a reasonable doubt and to a moral certainty that the defendant actually possessed 800 type TT gasoline ration coupons of the United States, that they were lawful and bona fide ration coupons issued by a rationing board of the United States, and that he possessed them on or about September 2, 1943 in the county of Los Angeles, State of California; further, that the defendant was not the person, nor the agent of the person, to whom said gasoline ration coupons had been issued by a war price and ration board.

If the government has failed to prove any of these material elements beyond a reasonable doubt you must acquit the defendant as to count one of the information.



As to count two of the information it is incumbent upon the government to prove beyond a reasonable doubt that the defendant on or about September 2, 1943 in the county of Los Angeles did knowingly, wilfully and unlawfully assign and transfer 800 type TT gasoline ration coupons, that they were valid coupons issued by a rationing board of the United States, and that he transferred them to Edgar E. Thompson in a manner other than in accordance with ration order 5c, as amended. The government must prove the charges strictly as made. If you have a reasonable doubt as to the proof of any of these elements, or if the government has failed to prove any of them beyond a reasonable doubt you must acquit the defendant of count two of the information.

Defendant's Instruction No. 3.

You are instructed that the word "possession" is defined as that which anyone occupies, owns or controls. In law it is the act, fact or condition of a person's having such control of property that he may legally enjoy it to the exclusion of all others having no better right than himself.

The word assign is defined as "to transfer or make over to another, especially to transfer to, and vest in, certain persons, called assignee, the property in question.

To "transfer" in law is the conveyance of right, title or property, either real or personal, from one person to another.

Defendant's Instruction No. 4.

You are instructed that you cannot convict on mere

speculation, conjecture or guesswork. The government must prove its case beyond a reasonable doubt or the defendant is entitled to an acquittal.

Defendant's Instruction No. 5.

You are instructed that mere association whether through business transactions or otherwise of one person with another who may be in violation of law does not make the person so associating guilty of crime.

Exceptions.

1. The defendant excepts to the order of the District Court refusing to quash and dismiss the information on each ground set up in the motion to quash and dismiss the information.

2. The defendant excepts to the order of the District Court overruling the demurrer to the information.

3. The defendant excepts to the order of the District Court refusing to set aside the information on the ground that it was not filed in accordance with section 591 U. S. C. A. and section 995 of the Penal Code of California, and on the ground that there is no reasonable and probable cause.

4. The defendant excepts to the order of the District Court refusing to set aside the information on the ground that it violates the Fifth Amendment to the Constitution of the United States.

5. The defendant excepts to the order of the District Court sustaining jurisdiction of the information on constitutional grounds.

6. The defendant excepts to the order of the District Court refusing to grant the motion in arrest of judgment.

7. The defendant excepts to the order of the District Court pronouncing judgment in this case.

8. The defendant excepts to the order of the District Court holding that the information states a public offense against the laws of the United States.

9. The defendant excepts to the order of the District Court denying the defendant's motion for a directed verdict at the close of the Government's case and at the close of his own case.

10. The defendant excepts to the ruling of the District Court holding that section 1394.8177 (c) of Ration Order 5C, inherently and as construed in this case is constitutional, and in holding that it does not attempt to create a crime by executive order.

11. The defendant excepts to the ruling of the District Court that there is constitutional or statutory authority for Ration Order 5C as herein construed and applied.

12. The defendant excepts to the order of the District Court denying the motion for a directed verdict on the grounds of the insufficiency of the evidence.

13. The defendant excepts to the instruction of the Court as follows:

“Any person who wilfully performs any act prohibited or wilfully fails to perform any act required by any provision of the Second War Powers Act, or any rule, regulation or order issued thereunder, shall be guilty of an offense.

“Ration Order 5C is a rule, regulation or order issued under and pursuant to the authority contained in the Second War Powers Act.

“Section 1394.8177 of Ration Order 5C reads in part:

“(b) No person shall transfer or assign and no person shall accept a transfer or assignment of any coupon book or any bulk, inventory or other coupon (whether or not such book was issued as a ration or as part of a ration book) or other evidence, except in accordance with the provisions of Ration Order No. 5C.”

Morris Lavine

Attorney for Appellant.



## Stipulation.

It is stipulated that the within Bill of Exceptions be settled, signed, and engrossed.

United States of America

By Charles Carr,

U. S. Atty.,

By James M. Carter

Ass't. U. S. Atty.,

Attys. for Plaintiff,

Morris Lavine

By Milton B. Safier

Atty for Dft.

4/19/44

(Photos.)



Copied from black-board by Reporter.

DAVIS LOT

← SHACK  
8801 SUNSET

X.C.T.

XX

D.T.C.

XX

SIDEWALK

DRIVEWAY

X.C.A.R.

SUNSET BLVD.

W ←

→ E.

BAR

F.T.

STORES

STREET

← T.CAR

← DRIVEWAY

←





In the District Court of the United States

Southern District of California

Central Division

No. 16260 Cr.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LESTER ARTHUR CORSON,

Defendant.

ORDER APPROVING BILL OF EXCEPTIONS.

An order approving the Bill of Exceptions having been presented to this Court and having been amended to correspond with the facts, is now settled, signed, and made a part of the records within the term and within the time fixed by the United States Circuit Court of Appeals for the Ninth Circuit.

Dated: April 19, 1944.

Leon R. Yankwich

United States District Judge

Rec'd copy of the within Bill of Exceptions this 30th day of March, 1944. Charles H. Carr, United States attorney; by James M. Carter, ass't U. S. Atty.

[Endorsed]: Filed Apr. 19, 1944.

[Endorsed]: No. 10607. United States Circuit Court of Appeals for the Ninth Circuit. Lester Arthur Corson, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed April 28, 1944.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for  
the Ninth Circuit.

[Title of Circuit Court of Appeals and Cause.]

ORDER RELIEVING DEFAULT AND ENLARGEMENT OF TIME.

Upon reading and filing the petition and affidavit of Morris Lavine, attorney for appellant, for an order of this court granting relief from default in filing and settling a bill of exceptions and assignment of errors in this cause, and the court being fully advised in the premises and good cause appearing therefor,

It is hereby ordered that appellant and his counsel, Morris Lavine, be and are hereby relieved of default in lodging a proposed bill of exceptions and assignment of errors in this cause.

It is further ordered that appellant have to and including March 31, 1944, within which to lodge his proposed bill of exceptions and file his assignments of error in this cause; and that the Government have to and including April 15, 1944 within which to file proposed amendments; and that the District Court have to and including April 29, 1944 within which to settle and engross said bill of exceptions.

Dated: March 21, 1944.

Curtis D. Wilbur

Albert Lee Stephens

United States Circuit Judges

[Endorsed]: Filed Mar. 21, 1944.

[Title of Circuit Court of Appeals and Cause.)

### ASSIGNMENT OF ERRORS.

Appellant assigns the following errors in the record:

1. The District Court of the United States erred in overruling the defendant's objections to the information and each count thereof, that said information failed to charge an offense against the laws of the United States.

2. The District Court erred in holding that Ration Order 5C, section 1394.8177(c), inherently and as construed and applied in this case is constitutional, and in overruling the objection that it attempts to create a crime by executive order.

3. The District Court erred in holding that the Act authorizes the issuance of the regulation by the persons who issued them.

4. The District Court erred in holding that the Act and the orders under it are not violative of the Fifth Amendment to the Constitution of the United States, and that they are too vague, indefinite and uncertain to constitute a public offense.

5. The District Court erred in overruling each and all of the grounds of the demurrer and each and all of the grounds of the motion to quash and dismiss the information.

6. The District Court erred in overruling the motion to set aside the information on the ground that it was not filed in accordance with section 591 U. S. C. A. and section 995 of the Penal Code of California.

7. The District Court erred in overruling the objec-



tion that there was reasonable and probable cause to arrest the defendant.

8. The District Court erred in overruling the objection that the Fifth Amendment to the Constitution of the United States, in its due process clause, was violated.

9. The District Court erred in refusing to grant the motion in arrest of judgment.

10. The District Court erred in failing to direct the verdict at the close of the Government's case and at the close of the defendant's case, to which exception was duly taken.

11. The District Court erred in instructing the jury that Ration Order 5C is a rule, regulation or order issued under and pursuant to the authority contained in the Second War Powers Act.

12. The District Court erred in failing to grant the motion for a directed verdict on the ground of insufficiency of the evidence.

13. The District Court erred in giving the following instruction:

"Any person who wilfully performs any act prohibited or wilfully fails to perform any act required by any provision of the Second War Powers Act, or any rule, regulation or order issued thereunder, shall be guilty of an offense.

"Ration Order 5C is a rule, regulation or order issued under and pursuant to the authority contained in the Second War Powers Act.

"Section 1394.8177 of Ration Order 5C reads in part:

" '(b) No person shall transfer or assign and no person shall accept a transfer or assignment of any coupon book or any bulk, inventory or other coupon (whether or not such book was issued as a ration or as part of a ration book) or other evidence, except in accordance with the provisions of Ration Order No. 5C.' "

For which errors appellant prays for a reversal of the judgment.

Morris Lavine

Attorney for Appellant

Received copy of the within Assignment of Errors this 30th day of March, 1944. Charles H. Carr, United States attorney; by James M. Carter, Ass't. United States attorney.

[Endorsed]: Filed Apr. 28, 1944.

[Endorsed]: Filed Mar. 30, 1944.

No. 10607

IN THE

# United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

---

LESTER ARTHUR CORSON,

*Appellant,*

*vs.*

UNITED STATES OF AMERICA,

*Appellee.*

---

## STATEMENT OF JURISDICTION.

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MORRIS LAVINE,

619 Bartlett Building. Los Angeles 14,

*Attorney for Appellant.*

FILED

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No. 10607

IN THE

United States Circuit Court of Appeals  
FOR THE NINTH CIRCUIT

---

LESTER ARTHUR CORSON,

*Appellant,*

*vs.*

UNITED STATES OF AMERICA,

*Appellee.*

---

STATEMENT OF JURISDICTION.

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A.

Jurisdiction is conferred in this case by Title 28, Section 225 (Judicial Code, Section 128, amended), Subdivision 6, Title 3, Public Law 507, 77th Congress, Chapter 199, 2nd Session.

B.

The statutes involved are Public Law 507, 77th Congress, Title 3, reading as follows:

TITLE III—PRIORITIES POWERS

Sec. 301. Subsection (a) of section 2 of the Act of June 28, 1940 (54 Stat. 676), entitled "An Act to expedite national defense, and for other purposes," as amended by the Act of May 31, 1941 (Public Law Numbered 89, Seventy-seventh Congress), is hereby amended to read as follows:

“Sec. 2. (a) (1) That whenever deemed by the President of the United States to be in the best interests of the national defense during the national emergency declared by the President on September 8, 1939, to exist, the Secretary of the Navy is hereby authorized to negotiate contracts for the acquisition, construction, repair, or alteration of complete naval vessels or aircraft, or any portion thereof, including plans, spare parts, and equipment therefor, that have been or may be authorized, and also for machine tools and other similar equipment, with or without advertising or competitive bidding upon determination that the price is fair and reasonable. Deliveries of material under all orders placed pursuant to the authority of this paragraph and all other naval contracts or orders and deliveries of material under all Army contracts or orders shall, in the discretion of the President, take priority over all deliveries for private account or for export: *Provided*, That the Secretary of the Navy shall report every three months to the Congress the contracts entered into under the authority of this paragraph: *Provided further*, That contracts negotiated pursuant to the provisions of this paragraph shall not be deemed to be contracts for the purchase of such materials, supplies, articles, or equipment as may usually be bought in the open market within the meaning of section 9 of the Act entitled ‘An Act to provide conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes,’ approved June 30, 1936 (49 Stat. 2036; U. S. C., Supp. V, title 41, secs. 35-45): *Provided further*, That nothing herein contained shall relieve a bidder or contractor of the obligation to furnish the bonds under the requirements of the Act of August 24, 1935 (49 Stat. 793; 40 U. S. C. 270 (a) to (d)): *Provided further*, That the



cost-plus-a-percentage-of-cost system of contracting shall not be used under the authority granted by this paragraph to negotiate contracts; but this proviso shall not be construed to prohibit the use of the cost-plus-a-fixed-fee form of contract when such use is deemed necessary by the Secretary of the Navy: *And provided further*, That the fixed fee to be paid the contractor as a result of any contract entered into under the authority of this paragraph, or any War Department contract entered into in the form of cost-plus-a-fixed-fee, shall not exceed 7 per centum of the estimated cost of the contract (exclusive of the fee as determined by the Secretary of the Navy or the Secretary of War, as the case may be).

“(2) Deliveries of material to which priority may be assigned pursuant to paragraph (1) shall include, in addition to deliveries of material under contracts or orders of the Army or Navy, deliveries of material under—

“(A) Contracts or orders for the government of any country whose defense the President deems vital to the defense of the United States under the terms of the Act of March 11, 1941, entitled ‘An Act to promote the defense of the United States’;

“(B) Contracts or orders which the President shall deem necessary or appropriate to promote the defense of the United States;

“(C) Subcontracts or suborders which the President shall deem necessary or appropriate to the fulfillment of any contract or order as specified in this subsection (a).

Deliveries under any contract or order specified in this subsection (a) may be assigned priority over deliv-

eries under any other contract or order; and the President may require acceptance of and performance under such contracts or orders in preference to other contracts or orders for the purpose of assuring such priority. Whenever the President is satisfied that the fulfillment of requirements for the defense of the United States will result in a shortage in the supply of any material or of any facilities for defense or for private account or for export, the President may allocate such material or facilities in such manner, upon such conditions and to such extent as he shall deem necessary or appropriate in the public interest and to promote the national defense.

“(3) The President shall be entitled to obtain such information from, require such reports and the keeping of such records by, make such inspection of the books, records, and other writings, premises or property of, any person (which, for the purpose of this subsection (a), shall include any individual, partnership, association, business trust, corporation, or any organized group of persons, whether incorporated or not), and make such investigations, as may be necessary or appropriate, in his discretion, to the enforcement or administration of the provisions of this subsection (a).

“(4) For the purpose of obtaining any information, verifying any report required, or making any investigation pursuant to paragraph (3), the President may administer oaths and affirmations, and may require by subpoena or otherwise the attendance and testimony of witnesses and the production of any books or records or any other documentary or physical evidence which may be relevant to the inquiry. Such attendance and testimony of witnesses and the production of such books, records, or other docu-

mentary or physical evidence may be required at any designated place from any State, Territory, or other place subject to the jurisdiction of the United States: *Provided*, That the production of a person's books, records, or other documentary evidence shall not be required at any place other than the place where such person resides or transacts business, if, prior to the return date specified in the subpoena issued with respect thereto, such person furnishes the President with a true copy of such books, records, or other documentary evidence (certified by such person under oath to be a true and correct copy) or enters into a stipulation with the President as to the information contained in such books, records, or other documentary evidence. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. No person shall be excused from attending and testifying or from producing any books, records, or other documentary evidence or certified copies thereof or physical evidence in obedience to any such subpoena, or in any action or proceeding which may be instituted under this subsection (a), on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be subject to prosecution and punishment or to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled to testify or produce evidence, documentary or otherwise, after having claimed his privilege against self-incrimination, except that any such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. The President shall not publish or disclose any information obtained under this paragraph which the President deems confidential or with refer-



ence to which a request for confidential treatment is made by the person furnishing such information, unless the President determines that the withholding thereof is contrary to the interest of the national defense and security; and anyone violating this provision shall be guilty of a felony and upon conviction thereof shall be fined not exceeding \$1,000, or be imprisoned not exceeding two years, or both.

“(5) Any person who willfully performs any act prohibited, or willfully fails to perform any act required by, any provision of this subsection (a) or any rule, regulation, or order thereunder, whether heretofore or hereafter issued, shall be guilty of a misdemeanor, and shall, upon conviction, be fined not more than \$10,000 or imprisoned for not more than one year, or both.

“(6) The district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States and the courts of the Philippine Islands shall have jurisdiction of violations of this subsection (a) or any rule, regulation, or order or subpoena thereunder, whether heretofore or hereafter issued, and of all civil actions under this subsection (a) to enforce any liability or duty created by, or to enjoin any violation of, this subsection (a) or any rule, regulation, order, or subpoena thereunder whether heretofore or hereafter issued. Any criminal proceedings on account of any such violation may be brought in any district in which any act, failure to act, or transaction constituting the violation occurred. Any such civil action may be brought in any such district or in the district in which the defendant resides or transacts business. Process in such cases, criminal or civil, may be served in any district wherein the defendant resides or trans-



acts business or whenever the defendant may be found; and subpoena for witnesses who are required to attend a court in any district in any such case may run into any other district. No costs shall be assessed against the United States in any proceeding under this subsection (a).

“(7) No person shall be held liable for damages or penalties for any default under any contract or order which shall result directly or indirectly from compliance with this subsection (a) or any rule, regulation, or order issued thereunder, notwithstanding that any such rule, regulation, or order shall thereafter be declared by judicial or other competent authority to be invalid.

“(8) The President may exercise any power, authority, or discretion conferred on him by this subsection (a), through such department, agency, or officer of the Government as he may direct and in conformity with any rules or regulations which he may prescribe.”

### C.

Section 1394.8177 of Ration Order 5C referred to in this case is as follows:

“(b) No person shall transfer or assign and no person shall accept a transfer or assignment of any coupon book or any bulk, inventory or other coupon (whether or not such book was issued as a ration or as part of a ration book) or other evidence, except in accordance with the provisions of Ration Order No. 5C.’ ”

D.

The issues raised by this appeal:

1. Is an information which merely refers to a statute by number and date and to a regulation by number sufficient to inform the accused of the nature and cause of the accusation? Is such an information violative of the Sixth Amendment to the Constitution of the United States?
2. Is a statute which fails to contain any penal provision sufficient to constitute a crime against the laws of the United States?
3. Does the attempt to create a crime by Ration Order 5C constitute an unconstitutional attempt to create a crime by executive order?
4. Did the Court err in giving an instruction to the jury in this case regarding the acts permitted or forbidden under the Second War Powers Act?
5. Is Ration Order 5C logically or legally proper or possible under the Second War Powers Act?
6. Does the Second War Powers Act violate the Fifth Amendment to the Constitution of the United States in that it fails to specify the acts that may constitute a crime?
7. Did the trial court err in failing to direct the verdict for insufficiency of the evidence?

8. Did the District Court err in failing to quash the warrant and dismiss the action for want of probable cause and for violation of the provisions of Section 591, United States Codes, Annotated, and Section 995 of the Penal Code of California, where regulations are constantly subject to change?

E.

Statutes and cases believed to sustain jurisdiction:

Title 28, Sec. 225;

*Lau Ow. Bew v. U. S.*, 14 U. S. 47, 36 Fed. 340;

*Salinger v. U. S.*, 272 U. S. 542, 71 L. Ed. 398.

Respectfully submitted,

MORRIS LAVINE,

*Attorney for Appellant.*





No. 10607

IN THE

# United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

---

LESTER ARTHUR CORSON,

*Appellant,*

*vs.*

UNITED STATES OF AMERICA,

*Appellee.*

---

## APPELLANT'S OPENING BRIEF.

---

MORRIS LAVINE,

619 Bartlett Building, Los Angeles 14,

*Attorney for Appellant.*

**FILED**

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PAUL P. O'BRIEN,  
CLERK



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No. 10607

IN THE

United States Circuit Court of Appeals  
FOR THE NINTH CIRCUIT

---

LESTER ARTHUR CORSON,

*Appellant,*

*vs.*

UNITED STATES OF AMERICA,

*Appellee.*

---

APPELLANT'S OPENING BRIEF.

---

This is an appeal from a judgment of one year in jail after conviction of count two of an information charging violation of "Ration Order 5C as amended," allegedly issued "pursuant to the provisions of the Second War Powers Act" (Pub. L. (4) 507, 77th Congress, 2nd Sess., March 27, 1942).

The information was verified by Jonah Taylor, investigator for the Office of Price Administrator. [R. 5.] Thereafter demurrers to the motion to cross the information were filed. [R. 6. 12.] The motions were overruled and exception allowed. [R. 15.]

The defendant renewed his motion and moved to set aside on the ground that it was not filed in accordance with Section 591, U. S. C. A., and Section 995 of the

Penal Code of the State of California, and on the ground that there was no reasonable and probable cause, also that the Fifth Amendment to the Constitution of the United States was violated. The motion was denied and exception allowed [R. 16]; then the case was called before Judge Benjamin Harrison on preliminary motions. Ration Order 5C has already been amended 73 times. [R. 67.] At the outset of the trial appellant again objected on the ground that the defendant was being prosecuted for a violation of the Second War Powers Act, which contained no penal provision, but the allegation was a violation of an OPA directive and that there was no authority to subdelegate power to issue directives which would become violations of law. Objection was further made [R. 68] to the creation of crime by an administrator. [R. 130.] There was no priority-created crime by executive order [R. 131]; exception duly noted.

Two investigators of the Office of Price Administration, John E. Foster and Jonah Taylor, arrested appellant without a warrant on this misdemeanor charge (for which appellant was later sentenced to one year in the County Jail).

Foster solicited a man named Edgar E. Thompson on September 2, 1943. [R. 70.] Thompson had had a previous criminal record and was an ex-convict. [R. 78.] The investigator met Thompson twice at Manhattan Beach. At the time they arrested him, he had some ration stamps. They were all kinds; TT's, D's and B's. [R. 79.] White was not taken into custody. He was released



almost immediately. Thompson was taken to his home in Long Beach and from his home he was brought to the Federal Building in Los Angeles. [R. 79.] The officers then made an arrangement with Thompson, who said he had recently married and wanted to be with his wife to follow Corson that afternoon. The officers rode with Thompson and Thompson drove out to this parking lot where he had sold an automobile and where his automobile was on the parking lot. Thompson met the appellant on two occasions. The officers asserted that they had searched Thompson before he went onto the lot. They searched him again on his return and he had the TT stamps which were introduced in evidence. They said they were 140 feet away from where Thompson parked the car and entered the lot but not more than 115 and 125 feet away from where the transaction allegedly took place [R. 86.] Thompson received a sentence of only 90 days, but not for this alleged transaction. [R. 87.]

From the time that Thompson left on the first trip to go to 8801 Sunset Boulevard he was out of the sight of the officers until Corson was arrested. He went in one place to eat and the officers went into another. The officers claimed to have used binoculars. [R. 89.] They claimed to have seen something pass from one man to another. Appellant assigns the following errors in the record:

I.

**Count Two of the Information Fails to State an  
Offense of the Laws of the United States.**

Count II of the information is as follows:

**Count Two.**

That on or about the 2nd day of September, 1943, in the County of Los Angeles, State of California, in the district aforesaid, and in the Central Division thereof, and within the jurisdiction of this Court, Lester Arthur Corson did knowingly, wilfully and unlawfully assign and transfer to Edgar E. Thompson eight hundred (800) Type "TT" gasoline ration coupons in a manner other than in accordance with the provisions of Ration Order 5C (7 Fed. Reg. 9135), as amended, in violation of the provisions of Section 13494.8177 (b) of said Ration Order 5C, as amended, issued pursuant to the provisions of the Second War Powers Act (Pub. L. (4) 507, 77th Cong. 2d Sess., March 27, 1942), contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States. [R. 4.]

It will be seen that the information is not in the language of the statute nor is it in the language of the regulation. There is no charging parts in the information so that the accused may know what statutes and regulations he is violating.

Both a court and an accused are entitled to know what law and what portion of a law they are charged with violating and what regulation and what portion of a regulation they are violating. Simply to refer to a statute by a number and reference which even a lawyer has difficulty in finding and to refer a regulation, not stating what the regulation is, does not sufficiently inform the Court and

the accused of the nature and cause of the accusation to comply with the Sixth Amendment to the Constitution of the United States, to state a public offense against the laws of the United States. The information does not even set out the forbidden conduct in the regulation, nor does it set forth any regulation. Such an information is entirely insufficient.

*U. S. v. Cruikshank*, 92 U. S. 542, 23 L. Ed. 588,  
Fed. Case 14455, 2 Paine 451;

*U. S. v. Simmons*, 96 U. S. 360, 24 L. Ed. 819;

*U. S. v. Hess*, 124 U. S. 483, 31 L. Ed. 516;

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*Brenner v. U. S.*, 287 Fed. 636;

*Shaw v. U. S.*, 292 Fed. 339;

*Haynes v. U. S.*, 4 Fed. (2d) 889;

*Lynch v. U. S.*, 10 Fed. (2d) 947;

*Asgill v. U. S.*, 60 Fed. (2d) 780;

*Kerns v. U. S.*, 74 Fed. (2d) 251;

*Pierce v. U. S.*, 86 Fed. (2d) 949;

*Reimer-Gross Co. v. U. S.*, 20 Fed. (2d) 36;

*U. S. v. Strobach*, 28 Fed. 902;

*U. S. v. Brazeau*, 78 Fed. 464;

*Azuma Kubo v. U. S.*, 31 Fed. (2d) 88;  
*Martin v. U. S.*, 168 Fed. 198;  
*Ackley v. U. S.*, 200 Fed. 217;  
*U. S. v. Bopp*, 230 Fed. 723;  
*Boykin v. U. S.*, 11 Fed. (2d) 484;  
*U. S. v. Cozwell*, 243 Fed. 730;  
*U. S. v. Louisville & N. R. Co.*, 165 Fed. 936;  
*Hall v. U. S.*, 89 Fed. (2d) 578;  
*Harris v. U. S.*, 104 Fed. (2d) 41.

## II.

### **The Information Fails to Charge an Offense Against the Laws of the United States in That Public Law No. 507, 77th Congress, March 27, 1942, Fails to Contain Any Penal Provisions, Except to Unrelated Matters.**

There are no penal provisions in the Second War Powers Act of March 27, 1942, relating to the matters herein charged.

It is elementary hornbook law that in every crime there must be a crime defined and punishment.

*U. S. v. Seibert*, 2 F. (2d) 80.

Section 15 of the Penal Code of California defines a crime to be an act committed or omitted in violation of a law forbidding or commanding it and to which is annexed, upon conviction, either of the following punishments: (Listing.)

Statutes creating crimes are to be strictly construed and may not be held to extend to cases not covered by the words used.

*U. S. v. Resnick*, 299 U. S. 207, 81 L. Ed. 127.



Punishment is as necessary to constitute a crime as definition.

*People v. McNulty*, 93 Cal. 427;

*In re Ellsworth*, 165 Cal. 677.

The motions to quash and dismiss the information, the demurrer to the information and the motion in arrest of judgment should therefore have been granted on this ground.

### III.

#### **The Attempt to Create a Crime by a Rationing Order 5C Is an Unconstitutional Attempt to Create a Crime by Executive Order.**

The information charges a violation of the provisions of Section 1394.8177 (b) of Ration Order 5C as amended. This order cannot make criminal that which the statute itself does not make criminal. It is not the violation of a regulation that constitutes a crime, but of a statute making it a crime to violate some regulation pursuant to it.

In so far as this case is an attempt to create a crime by executive order it is unconstitutional and violative of Article I, Sections 1 and 8, of the Constitution of the United States.

*Constitution of the United States*, Art. I, Secs.  
1, 8.

A regulation cannot make its violation a criminal offense in the absence of a statute making it an offense.

*U. S. v. Eaton*, 144 U. S. 677, 36 L. Ed. 591;

*Interstate Commerce Comm. v. Cincinnati N. O. & T. P. R. Co.*, 167 U. S. 479, 42 L. Ed. 243.

The District Court erred in giving the following instruction:

"Any person who wilfully performs any act prohibited or wilfully fails to perform any act required by any provisions of the Second War Powers Act, or any rule, regulation or order issued thereunder, shall be guilty of an offense.

"Ration Order 5C is a rule, regulation or order issued under and pursuant to the authority contained in the Second War Powers Act."

This instruction was erroneous because the Second War Powers Act did not require the performance or forbid the performance of any act charged in this information, nor was there any rule, regulation or order issued thereunder, or authorized to be issued under the Second War Powers Act, nor did the Act make the performance or non-performance of such act or such regulation an offense.

Hence the instruction as to a matter not the law was erroneous.

The District Court therefore erred in overruling each of the grounds of demurrer, motions to quash and motions in arrest of judgment.

IV.

**The Second War Powers Act Fails to Define the Acts Herein as Constituting a Crime.**

Any attempt to create a crime by regulations or orders would violate the Fifth Amendment to the Constitution of the United States.

A penal statute must itself define a crime. Unless the statute itself contains all the elements of the offense so clearly that men of common understanding may know the forbidden conduct the statute would violate the Fifth Amendment to the Constitution of the United States.

*U. S. v. Recse*, 92 U. S. 214;

*Connally v. General Construction Co.*, 269 U. S. 385, 70 L. Ed. 322.

*Lanzetti v. New Jersey*.

But here the statute itself contains no such provisions. Hence no crime is charged.

Hence it would be violative of due process of law guaranteed by the Fifth Amendment, in that anything done was arbitrary and capricious and without any law.

*U. S. v. 11,150 Pounds of Butter*, 195 Fed. 657.

V.

**The Trial Court Erred in Failing to Direct the Verdict.**

As to count two of the information, the evidence shows that the defendant was arrested by two OPA investigators on the misdemeanor charge herein, that at the time of the arrest they were not officers authorized by the United States of America to make arrests, nor was the charge a felony. The evidence further shows that Foster and Taylor took a man into custody named Ernest E. Thompson, who was an ex-convict. [R. 78.] They made arrangements with Thompson to go to the place of business of Lester Arthur Corson on Sunset Boulevard. Corson was a used car dealer who had known Thompson and paid him commissions for selling automobiles for Corson. [R. 114.] A day or two before Corson's arrest Thompson had been in Corson's place of business, and Corson had told him either to take his car back or give Corson the bill of sale on it. On the afternoon of September 2, 1943, Thompson went to Corson's place of business. The two OPA men, Foster and Taylor, said they searched Thompson and his wife before he went over.

They followed him again when he went over to see Corson a second time, at around 6:30 p. m. Corson testified that Thompson endeavored to sell him the used car he was driving for \$1900, and that they were discussing the matter; that Thompson walked over to the other automobile he had sold to Corson a few days before that and at that time the OPA men popped up and arrested him



and charged him with transferring coupons to Thompson illegally. [R. 116.] At no time did the officers *ever find or actually see any coupons* in the possession of Corson. There were elements of a manufactured case of the type which the law abhors.

Thompson received a very light sentence of 90 days in jail upon his plea of guilty to five counts of violation of the ration laws growing out of the possession of other coupons in no way related to the appellant. [R. 112.] With this evidence the Court should have quashed the warrant on the ground that the OPA men had no right to make the arrest and that there was no probable cause. Furthermore, the Court should have directed the verdict.

The Government did not present any evidence before the first motion for directed verdict [R. 107] to show that the defendant had violated any rule or regulation or that he was in unlawful possession of the stamps, nor did they ever show that he assigned or transferred any stamps. The words assign and transfer are defined as follows:

“To ‘transfer and assign’ in law is the conveyance of right, title or property, either real or personal, from one person to another.”

*Curtin v. Kowalsky*, 145 Cal. 431, 435:

*North Texas National Bank v. Thompson*, 23 S. W. (2d) 494;

*Hoag v. Mendenhall*, 19 Minn. 335, 336.

But since the words "transfer and assign" have legal meanings that connote a change of title and legal ownership, and there could be no transfer and assignment without the ability to do so legally, here there was none. Therefore, since the subject matter charged could not be subject to transfer and assignment, and since the subject shows no effort to transfer and assign under a purported legal authority, the evidence is entirely insufficient.

The Government failed to prove that the defendant actually assigned and transferred any stamps. The case rests on the pure conjecture of the two OPA investigators that they searched Thompson before he went over to the lot and that afterwards he came back and he had the stamps in his possession. The officers further claimed that they saw papers pass from Corson to Thompson. [R. 103.] They couldn't state what were in the papers.

When Thompson was first arrested there was some discussion about his wanting to do everything he could to help, but that he didn't want to leave his wife alone. It is respectfully submitted this evidence is insufficient to overcome the presumption of innocence and is not substantial evidence to justify the verdict. Motions for directed verdict at the close of the government's case and the entire case were denied, exceptions being taken. [R. 107, 122.]

VI.

**The Defendant's Rights Under the Fifth Amendment of the Constitution of the United States Were Violated.**

The defendant moved to set aside the information on the ground that it was not filed in accordance with Section 591, United States Codes, Annotated, and Section 995 of the Penal Code of California, and on the ground that there was no reasonable and probable cause. Also, that the Fifth Amendment to the Constitution of the United States was violated. These motions were overruled and exceptions allowed. [R. 52.]

The defendant was arrested by Jonah Taylor and John E. Foster. The charge was a misdemeanor. Thereafter Jonah Taylor swore to a complaint and set forth in his complaint that he is an employee of the United States Government, to wit, an investigator for the Office of Price Administration, an agency of the United States Government; that in the course of his duty as investigator for the Office of Price Administration, he made an investigation of the matters set forth and mentioned in the information against Lester Arthur Corson, and that he knows the contents of the information and that the matters set forth therein are true of his own knowledge. The defendant moved to set aside the information for want of reasonable and probable cause. There was nothing in the verification that showed any reasonable or probable cause, and the defendant was entitled to have the Court grant the motion pursuant to Section 591 of the U. S. C. A. and Section 995 of the Penal Code of the State of California. It was the duty of the Court to take evidence as to whether there was probable cause. It was also his duty to set aside the information and quash the warrant when the defendant had been illegally arrested.

VII.

**The Defendant Was Denied Due Process of Law Because of the Large Number of Changes of Regulations Which Neither He nor the Jury Knew, nor Which Were Contained in the Charges Against Him.**

When the case was first called, the regulation 5C of the Office of Price Administration had been amended seventy-three times. [R. 67.]

When the trial was called the regulations had been amended more than a hundred times.

**The District Court Erred in Instruction Given.**

The only instruction given by the Court on what ration order 5C says or does not say is as follows:

“Section 1394.8177 of Ration Order 5C reads in part:

“(b) No person shall transfer or assign and no person shall accept a transfer or assignment of any coupon book or any bulk, inventory or other coupon (whether or not such book was issued as a ration or as part of a ration book) or other evidence, except in accordance with the provisions of Ration Order No. 5C.’”

And again the Court gave the jury instructions as follows:

“It is incumbent upon the Government to prove beyond a reasonable doubt that the defendant on or about September 2, 1943, in the County of Los Angeles did knowingly, wilfully, and unlawfully assign and transfer 800 type TT gasoline ration coupons, that they were valid coupons issued by a rationing



board of the United States, and that he transferred them to Edgar E. Thompson, in a manner other than in accordance with Ration Order 5C, as amended, and as again amended. The Government must prove the charges strictly as made. If you have a reasonable doubt as to the proof of any of these elements, or if the Government has failed to prove any of them, beyond a reasonable doubt, you must acquit the defendant of Count Two of the Information."

Neither of these instructions told the jury what Ration Order 5C provided nor the manner in which Ration Order 5C provided that stamps could be assigned or transferred, and what Ration Order 5C allows or forbids [R. 128], (nor what act is required by the Second War Powers Act). Nor is there anything in the testimony in the case wherein the Government offered any regulations to the jury by which the jury could determine whether the stamps were or were not transferred in accordance with the provisions of Ration Code 5C as amended more than a hundred times. It is respectfully submitted that such proceedings deny to a citizen of the United States of America due process of law guaranteed by the Fifth Amendment to the Constitution.

Wherefore, we pray that the judgment be reversed.

Respectfully submitted,

MORRIS LAVINE,

*Attorney for Appellant.*



No. 10607.

IN THE  
United States Circuit Court of Appeals  
FOR THE NINTH CIRCUIT

---

LESTER ARTHUR CORSON,

*Appellant,*

*vs.*

UNITED STATES OF AMERICA,

*Appellee.*

---

APPELLEE'S BRIEF.

---

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FILED

OCT 9 - 1944

PAUL P. O'BRIEN,  
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No. 10607.

IN THE

# United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

---

LESTER ARTHUR CORSON,

*Appellant,*

*vs.*

UNITED STATES OF AMERICA,

*Appellee.*

---

## APPELLEE'S BRIEF.

---

### Jurisdiction.

Appellant, as defendant below, was charged with the violation of the Second War Powers Act (Public Law 507, 77th Congress, 2nd Sess., March 27, 1942) and Section 1394.8177(b) of Ration Order 5C (7 F. R. 9135) as amended, issued pursuant to said Act. [R. 4]. He was found guilty by the jury [R. 54] and the entry of judgment of conviction and order denying motion for new trial were made on November 9, 1943 [R. 30, 31]. Notice of appeal was made on the same day [R. 33]. The jurisdiction of this Court rests on 28 U. S. C., Sections 225 and 723a; Rule III of the Rules of the Supreme Court in criminal cases.

## Statement of the Case.

It is assumed that pages 1-3, inclusive, of Appellant's Opening Brief, contain appellant's Statement of the Case. In so far as the same relates to some of the proceedings, it is correct; but in so far as it relates to facts, it presents matters entirely immaterial to the appeal. Rather than to point out the immateriality of the facts and place them in their proper chronological order and perspective, appellee will in its Point III succinctly set out the material facts surrounding the actual commission of the crime.

## Questions Presented by the Appeal.

1. Is the Second War Powers Act (50 U. S. C. A. App., Section 600 *et seq.*) constitutional?
2. Is the commission of an act prohibited by Ration Order 5C, issued pursuant to and after the passage of the Second War Powers Act, a crime?
3. Does Count II of the information filed against appellant sufficiently charge a crime?
4. Was the information properly filed?
5. Was the evidence sustaining the charge sufficient so that Motions for a Directed Verdict were properly denied?
6. Can appellant question the sufficiency of the instructions where he never requested further instructions nor excepted to those given on the ground that they were insufficient?

## ARGUMENT.

### I.

#### Count II Sufficiently Charges an Offense.

##### (Answer to Appellant's Point I.)

Appellant cites twenty-nine cases<sup>1</sup> as authority to support his argument that Count Two of the Information fails to state an offense against the laws of the United States (Br. 4). The consensus of those cases may be stated in the words of this Court's opinion in *Peters v. United States*, 94 Fed. 127, wherein it is said at page 131:

"Every indictment should charge the crime, which is alleged to have been committed, with precision and certainty, and every ingredient thereof should be accurately and clearly stated; but where the offense is purely statutory, and the words of the statute fully, directly, and expressly, without any uncertainty or ambiguity, set forth all the elements necessary to constitute the offense intended to be punished, it is sufficient to charge the defendant in the indictment with the acts coming fully within the statutory description, in the substantial words of the statute. *Ledbetter v. U. S.*, 170 U. S. 606, 610, 18 Sup. Ct. 774, and authorities there cited; 10 Enc. Pl. & Prac. 483, and authorities there cited.

"\* \* \* Many of them [indictments] might, doubtless, have been made more definite and clear. Our object will be to get at the merits, if any there be, of the numerous objections urged,—to ascertain whether the defendant has been prejudiced by the course pursued by the court; whether any of his legal rights has been invaded or violated; and to

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<sup>1</sup>*Kerns v. United States* (C. C. A. 10), 74 F. (2d) 351, is erroneously cited as appearing at page 251. *United States v. Strabach* (C. C. Ala.), 48 Fed. 902, is erroneously cited in Volume 28. *Hale v. United States* (C. C. A. 4), 89 F. (2d) 578, is erroneously entitled *Hall*.

brush away the cobwebs of pure technicalities with which the trial of the case, as in all criminal cases, seems to be surrounded.

"The true test of the sufficiency of an indictment is not whether it might possibly have been made more certain, but whether it contains every element of the offense intended to be charged, and sufficiently apprised the defendant of what he must be prepared to meet; and, in case any other proceedings are taken against him for a similar offense, whether the record shows with accuracy to what extent he may plead a former acquittal or conviction. *U. S. v. Simmons*, 96 U. S. 362; *U. S. v. Carll*, 105 U. S. 612; *U. S. v. Hess*, 124 U. S. 483, 8 Sup. Ct. 571; *Pettibone v. U. S.*, 148 U. S. 197, 13 Sup. Ct. 542; *Potter v. U. S.*, 155 U. S. 438, 15 Sup. Ct. 144; *Evans v. U. S.*, 153 U. S. 584, 587, 588, 14 Sup. Ct. 934, 939; *Batchelor v. U. S.*, 156 U. S. 426, 15 Sup. Ct. 446; *Cochran v. U. S.*, 157 U. S. 286, 290, 15 Sup. Ct. 628."

With those general observations in mind, the grounds urged by appellant are obviously not well taken.

The Information is in the language of the statute<sup>2</sup> and order<sup>3</sup> allegedly violated. The Information refers specifi-

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<sup>2</sup>Public Law 507, 77th Congress, Title 3, Section 301 (5); 50 U. S. C. A., App. 633: "Any person who willfully performs any act prohibited, or willfully fails to perform any act required by any provision of this subsection (a) or any rule, regulation, or order thereunder, whether heretofore or hereafter issued, shall be guilty of a misdemeanor, and shall, upon conviction, be fined not more than \$10,000 or imprisoned for not more than one year, or both."

<sup>3</sup>Ration Order 5C, Sec. 1394-8177(b): "No person shall transfer or assign and no person shall accept a transfer or assignment of any coupon book or any bulk, inventory or other coupon (whether or not such book was issued as a ration book and whether or not such coupon was issued as a ration or as part of a ration book) or other evidence, except in accordance with the provisions of Ration Order No. 5C." Note: Appellant does not correctly quote the section at page 7, Statement of Jurisdiction.



cally to the forbidden conduct, *i. e.*, the wilful transfer and assignment of coupons in a manner other than in accordance with the provisions of Ration Order 5C, and cites the particular statute and order.

Upon what authority appellant can support his statement that the accused and the court did not know what law or order accused is charged with violating is not known and is certainly not disclosed in his brief. Apparently appellant would have the United States set out the particular order *hæc verba*. That, of course, need not be done as the Courts will take judicial notice thereof.

*United States v. Casey* (D. C. E. D. Ohio, 1918),  
247 Fed. 362.

The requirements enunciated in the *Peters* case were entirely satisfied. The Information here charged the defendant with the offense in the language of the Second War Powers Act and the applicable order promulgated pursuant to said Act, with sufficient description to inform the defendant of the knowledge of the offense charged and the cause of the accusation and with such certainty that he could prepare his defense and plead the judgment in bar in subsequent prosecution for the same offense. That is enough.

*Taylor v. United States* (C. C. A. 9, April 26,  
1944), 142 F. (2d) 808;

*Feigin v. United States* (C. C. A. 9, 1922), 279  
Fed. 107;

*Olmstead v. United States* (C. C. A. 9, 1928), 29  
F. (2d) 239;

*Young v. United States* (C. C. A. 9, 1921), 272  
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*Dellaira v. United States* (C. C. A. 9, 1926), 10  
F. (2d) 102;

*F. Ruffino v. United States* (C. C. A. 9, 1940), 114  
F. (2d) 696.

It is sufficient to charge a statutory crime in the words of the statute where, as here, the words themselves freely, directly and expressly, without uncertainty and ambiguity, set forth all the elements necessary to constitute the offense intended to be punished.

*Azuma Kubo v. United States* (C. C. A. 9, 1929),  
31 F. (2d) 88.

As a matter of fact, appellant does not, as he cannot, urge that the Information fails to state every element of the offense charged, that he did not know what he had to meet, or that the regulation does not show with accuracy the extent to which he may plead the conviction. Appellant seems to make only one complaint: he did not know the nature and cause of the accusation because he could not, or it was difficult to, find the statute or order. Such a complaint obviously has no merit. If appellant in good faith could not find the statute, he could have secured the same through a Motion for Bill of Particulars. It is significant that he *did not* make such a motion.

II.

The Second War Powers Act Properly and Legally Provides That the Wilful Performance of an Act Prohibited by an Order Issued Pursuant Thereto, Viz., Ration Order 5C, Constitutes an Offense Against the Laws of the United States. (Answer to Appellant's Points II, III and IV.)

A. APPELLANT'S POSITION.

A direct criminal sanction for the enforcement of rationing regulations and orders is provided in the Second War Powers Act of 1942 (Public Law 507, 77th Congress, 2nd Sess.), Title III, Section 2 (a)(5) (See footnote 2). Therefore, direct criminal prosecution can be brought against any person who has violated any rationing order or regulation even though such order or regulation was not issued until after the effective date of the Act, of March 27, 1942. It should be carefully noted herein that the information charges not only a violation of the provisions of an order but also a violation of the Second War Powers Act itself by so stating specifically and further alleging that the defendant acted "contrary to the form of the statute in such case made and provided." [R. 4].

B. THE SECOND WAR POWERS ACT AND RATION ORDER 5C ARE CONSTITUTIONAL AS A LEGAL AND VALID DELEGATION OF POWER.

The provisions of the Second War Powers Act, pursuant to which Ration Order 5C was issued, through the Office of Price Administration, are not unconstitutional as an invalid delegation of power.

In *United States v. Randall* (D. C. E. D. N. Y., 1943), 50 F. Supp. 139, the court was confronted with the constitutionality of the particular ration order and section thereof to be considered herein. The court therein stated:

"The purpose of this enactment was to promote the general welfare and allocate the control of gasoline supply that was necessary for the defense of the United States. The President could not fulfill these functions individually but had to do so through various agencies.

"The Executive Orders of the President of the United States, and the rules and regulations prescribed by the administration office of Price Administrator issued pursuant thereto, are valid and effectual and do not violate any provision of the Constitution of the United States or any laws of the United States."

That decision was appealed to the Circuit Court, and in *United States v. Randall* (C. C. A. 2, 1944,) 140 F. (2d) 70, the lower court was affirmed in the following words:

"(1) Subsection (a) (2) of section 2 of Act of June 28, 1940, as amended by Second War Powers Act of 1942, §301, section 633, 50 U. S. C. A. Appendix, provides that whenever the President 'is satisfied that the fulfillment of requirements for the defense of the United States will result in a shortage in the supply of any material or of any facilities for defense \* \* \*,' he may allocate such material or facilities in such manner as 'he shall deem necessary



or appropriate in the public interest and to promote the national defense.' Other provisions authorize the President to obtain such information, require such reports and make such investigations as he may in his discretion think necessary or appropriate to the enforcement or administration of the subsection and to exercise his powers and discretion through subordinates. He did so through the Office of Price Administration. We entertain no doubt that the standard which the statute sets up is amply sufficient to meet the claim of invalid delegation. See *McKinley v. United States*, 249 U. S. 397, 399, 39 S. Ct. 324, 63 L. Ed. 668, *Avent v. United States*, 266 U. S. 127, 130, 45 S. Ct. 34, 69 L. Ed. 202."

In *United States v. Maviglia* (D. C. N. J., 1943), 52 F. Supp. 946, the defendant was charged with violation of Section 1394.8177(c) of Ration Order 5C. The Court therein found the Second War Powers Act and the Regulation constitutional.

See also: *O'Neal v. United States* (C. C. A. 6, 1944), 140 F. (2d) 908, cert. den. 321 U. S. [No. 2] vii; *Henderson v. Bryan* (D. C. S. D. Calif., 1942); 46 F. Supp. 682; *United States v. Tire Center* (D. C. Del., 1943), 50 F. Supp. 404 (all regarding tire rationing regulations); *United States v. Wright* (D. C. Del., 1943), 48 F. Supp. 687 (regarding Ration Order No. 3); *Brozen v. Bernstein* (D. C. M. D. Pa., 1943), 49 F. Supp. 729 (regarding meat rationing).

C. THE SECOND WAR POWERS ACT CREATES THE  
CRIME CHARGED HEREWITH.

It is apparent that appellant must limit himself to the argument that the Second War Powers Act did not authorize the Ration Order 5C because the penal provisions therein did not make a crime the *particular acts* which appellant is accused of doing. Such a limitation is forced upon appellant when his statements and authorities in Points II, III and IV are analyzed. Point II is bottomed on the statement that, "There are no penal provisions in the Second War Powers Act of March 27, 1942 relating to the matters herein charged" (Br. 6). Appellant cannot be overlooking the section of the Act making it a crime for any person "who willfully performs any act prohibited \* \* \* by any provision of this subsection (a) or any rule, regulation or order thereunder, *whether heretofore or hereafter issued*, \* \* \* shall be guilty of a misdemeanor, and shall, upon conviction be fined not more than \$10,000 or imprisoned for more than one year, or both," (emphasis supplied). The act manifestly makes criminal the willful performance of any act prohibited by Ration Order 5C.<sup>4</sup> Point III states (Br. 7) that "This Order cannot make criminal that which the statute itself does not make criminal." Point IV (Br. 9) argues that the Act does not define the crime and therefore any attempt to create a crime by regulation is illegal.

Appellant in attacking the instruction given by the District Court (Br. 8) discloses the heart of his argument

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<sup>4</sup>Appellant does not contend that Ration Order 5C was not properly promulgated in accordance with the Second War Powers Act. For a history of Ration Order 5C and the sequence of events whereby it was issued by the Office of Price Administration see *United States v. Randall*, 50 F. Supp. 139.

when he states that the instruction was erroneous because the Second War Powers Act "did not require the performance or forbid the performance of any act charged" nor "did the act make the performance or non-performance of such act or such regulation an offense."

The Second War Powers Act provides that "whenever the President is satisfied that the fulfillment of requirements for the defense of the United States will result in a shortage in the supply of any material or of any facilities for defense or for private account, or for export, the President may allocate such material or facilities in such manner upon such conditions and to such extent as he shall deem necessary or appropriate in the public interest and to promote the national defense." Further, the Act (Section 2(a)(8)) clearly authorizes the President to delegate that power.

It is not the Ration Order 5C but the Second War Powers Act in Section 2(a)(5) which creates the particular crime. The legality of such a position is well established by the authorities. In *United States v. Grimaud* (1910), 220 U. S. 506, 55 L. Ed. 563, 31 S. Ct. 480, the Court considers the entire matter of Congressional right to provide general regulations for various and varied details. In it the following opinion is stated at page 521:

"It is true that there is no act of Congress which, in express terms, declares that it shall be unlawful to graze sheep on a forest reserve. But the statutes, from which we have quoted declare, that the privilege of using reserves for 'all proper and lawful purposes' is subject to the proviso that the person so using them shall comply 'with the rules and regulations covering such forest reservation.' The same act makes it an



offense to violate those regulations, that is, to use them otherwise than in accordance with the rules established by the Secretary."

and at page 522:

"A violation of reasonable rules regulating the use and occupancy of the property is made a crime, not by the Secretary, but by Congress. The statute, not the Secretary, fixes the penalty."

and at page 523:

"The Secretary did not exercise the legislative power of declaring the penalty or fixing the punishment for grazing sheep without a permit, but the punishment is imposed by the act itself. The offense is not against the Secretary, but, as the indictment properly concludes, 'contrary to the laws of the United States and the peace and dignity thereof.'"

In *United States v. Casey* (D. C. Ohio, 1918), 247 Fed. 362, the Court in considering a demurrer and motion to quash an indictment for violation of a regulation of the Secretary of War promulgated pursuant to the Selective Service Act, at page 365, states:

"The regulation promulgated by him does not declare its violation a punishable offense. It is the act of Congress which declares that the violation of such regulation after its promulgation shall constitute a misdemeanor by the person transgressing it, and that he shall be fined or imprisoned, or both, as a penalty therefor. *United States v. Breen* (C. C.), 40 Fed. 402; *Railroad Co. v. Commissioners*, 1 Ohio St. 77, 88, 89; *Union Bridge Co. v. United States*, 204 U. S. 364, 27 Sup. Ct. 367, 51 L. Ed. 523; *Dastervignes v.*



United States, 122 Fed. 30, 58 C. C. A. 346 (C. C. A. 9); United States v. Ormsbee (D. C.), 74 Fed. 207."

Appellant cites two cases in support of the statement that "a regulation cannot make its violation a criminal offense in the absence of a statute making it an offense" (Br. 8).

The case of the *Interstate Commerce Commission v. Cincinnati, N. O. & T. P. R. Company* (1897), 167 U. S. 479, 42 L. Ed. 243, 17 S. Ct. 896, concerns the jurisdictional power of the Interstate Commerce Commission to make a certain order and is not a criminal action. It is seen at once that that case is not in point. The case of *United States v. Eaton* (1892), 144 U. S. 677, 36 L. Ed. 591, 12 S. Ct. 764, is a criminal action, but the circumstances therein do not fit the instant cause because, as clearly pointed out in the *Grimaud* case, the *Eaton* case can be distinguished on the ground that therein the act made criminal the failure to omit any of the things "required by law," whereas in the instant cause the Act makes criminal the doing of things prohibited by "any rule, regulation or order thereunder whether heretofore or hereafter issued."

As stated in *United States v. Smull* (1915), 236 U. S. 405, 59 L. Ed. 641, 35 S. Ct. 349, the only question is whether the regulation was one that could be imposed, and an inquiry into that matter is divided into two

branches: (1) Was the regulation addressed to the enforcement of the laws? (2) Was it inconsistent with any specific provision of the statute? That Ration Order 5C could be imposed has already definitely been decided in the *Randall* cases, *supra*, and the *Matviglia* case, *supra*. See, also: *Shreveport Engraving Co. v. United States* (C. C. A. 5, 1944), 143 F. (2d) 222.

In Point IV appellant cites three cases<sup>5</sup> as authority for the proposition that the statute itself must contain all the elements of the offense so clearly that men of common understanding may know the conduct forbidden. But what these cases really hold is that the criminal statute cannot be so vague that men of common intelligence must guess at its meaning. Such a situation is not present here nor does appellant contend that it is.

In conclusion, to paraphrase the closing words of the opinion in *United States v. Randall* (C. C. A. 2, 1942), *supra*, how it can seriously be argued that the violation of the ration order is not a criminal offense passes our comprehension in view of Section 2(a)(5) of the Second War Powers Act. It is not necessary that the congressional act specifically forbid the exact conduct so long as it forbids the conduct prohibited by an order properly issued pursuant thereto.

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<sup>5</sup>*Lanzetti v. New Jersey* is reported in 306 U. S. 451, 83 L. Ed. 888, 59 S. Ct. 618.

III.

**There Was Substantial Evidence Sustaining the Charge; Therefore, There Was No Error in Denying the Motions for a Directed Verdict. (Answer to Appellant's Point V.)**

It has been settled by this Court that, on motion for a directed verdict for defendant in a criminal case, if there is "proper, legal, competent or substantial evidence sustaining the charge," it should be submitted to the jury. *Maugeri v. United States* (C. C. A. 9, 1935), 80 F. (2d) 199, 202; *Gorin v. United States* (C. C. A. 9, 1940), 111 F. (2d) 712. The government presented such evidence at the trial, and the District Court committed no error in denying appellant's motions for a directed verdict.

Before briefly considering that evidence, we wish to point out that appellant's remarks concerning the evidence (Br. 2, 3, 10-12) are replete with erroneous and immaterial statements. The jury found the issues in favor of the government and reargument concerning defense matter is impertinent.<sup>6</sup> Further, some of the matters urged are bottomed upon points not raised at the trial or in this appeal.<sup>7</sup>

The case presented by the government proved the following facts material to the present issue:

John E. Foster and Jona H. Taylor, two OPA investigators (hereinafter referred to as "investigators").

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<sup>6</sup>The continual emphasis upon Thompson's sentence (Br. 3, 11); the mention that he was an ex-convict (Br. 2, 10); and the statement about his wanting to help (Br. 3, 12), have no proper place in this cause at this time.

<sup>7</sup>*E.g.*, no error is specified that the warrant should have been quashed because the arresting officers had no authority to make the arrest.



searched one Edgar E. Thompson and his wife and his car at about 6:30 p. m., September 2, 1943, and found no gasoline rationing coupons of any kind in their possession or in the car [R. 71, 99]. The two investigators then followed Thompson, who, with his wife, drove in their car to 8801 Sunset Boulevard [R. 71, 85]. The investigators were in their own car and had Thompson under observation at all times [R. 71]. Thompson parked his car next to the above address which was a used car lot [R. 72]. The investigators parked their car across Sunset Boulevard [R. 72]. Thompson got out of his car, went to the lot adjoining 8801, talked to the man there [R. 72]. Defendant Corson then drove up, walked over to Thompson and the other man [R. 73]. No contact was made among any of the three [R. 73]. Thompson and Corson returned to the lot at 8801 [R. 73]. Corson went to the back of the lot [R. 73], returned to Thompson and handed him a white, folded package which Corson had taken from his inside coat pocket [R. 74]. Thompson put the package in his right, outside coat pocket [R. 74, 101]. The investigators immediately started their car, proceeded across the street, got out of the car [R. 74]. Taylor took from Thompson's right, outside coat pocket the said package consisting of four sheets of gasoline coupons, totalling 800 type "TT" coupons [R. 75, 76, 100]. From the time the investigators had searched Thompson at 6:30 p. m. until Taylor took the coupons out of Thompson's pocket, Thompson had never been out of the vision of either investigators "even for a second" [R. 75].

While immaterial, it should be pointed out for the clarification of the Court that Thompson had seen Corson *twice* in the same day. The first time he saw him, nothing



material occurred [R. 83, 89] and afterwards he was actually out of the sight of the investigators [R. 89], but the *second* time was the time that the transfer alleged in the Information took place. It was just prior to this last visit that Thompson, his wife and his car were searched and from that time until the investigators took the coupons from his person after Corson had transferred them to him he was continually in the sight of the investigators [R. 89].

Appellant's claim that the Court should have directed the verdict is based upon two matters:

1. Appellant states that "At no time did the officers ever find or actually see any coupons in the possession of Corson" (Br. 11). That statement is palpably erroneous. The investigators saw Corson hand the folded "package" to Thompson—who, they knew, had no coupons on him—and when they took this "package" which Thompson had placed in his right-hand pocket, they found it to be 800 type "TT" gasoline coupons. Thus, *the investigators had seen the coupons actually in the possession of Corson when he took them out of his pocket* and handed them to Thompson.

2. The government proved that Corson had violated Ration Order 5C when it proved that he had assigned and transferred the coupons to Thompson. The word "assigned" means "to transfer." Black's Law Dictionary (3d Ed.), page 154; *Seventh Nat. Bank v. Shenandoah Iron Company* (C. C. Va., 1887), 35 Fed. 436, 440. Ration Order 5C itself provides the definition of "transfer" in Section 1394.7551 (2) (40) thereof, wherein it is defined as to "sell, give, exchange, lease, lend, deliver,

supply or furnish." The handing of the coupons from Corson to Thompson satisfies the requirements of the order. Even the definition proposed by appellant (Br. 11), that the words "transfer and assign" mean the conveyance of right, title or property, either real or personal, from one person to another, fits the facts herein and the jury was instructed on the particular point involved in the manner requested by defendant [R. 128, 134].

#### IV.

#### **The Information Was Properly Filed and Such Filing Violated No Rights of Appellant. (Answer to Appellant's Point VI.)**

While appellant *claims* in his Point VI (Br. 13) that, (a) the Information was not filed in accordance with Section 591, U. S. C. A., and Section 995, Penal Code of California, (b) it was filed without reasonable and probable cause, and (c) the Fifth Amendment to the Constitution was violated, no authority is cited or argument made to show how or in what way the claims are correct or applicable to this cause. Appellee asserts that no rights to which defendant was entitled were violated.

Section 591 of Title 18, U. S. C. (to which appellant refers, it is assumed) applies to State procedure for arrest, imprisonment, or bail and *not* to procedure in Federal Courts. *McNabb v. United States* (C. C. A. 6, 1944), 142 F. (2d) 904; *Roth v. United States* (C. C. A. 6, 1923), 294 F. 475; *Cf. United States v. Powolowski* (D. C. E. D. Pa., 1931), 270 Fed. 285; *United States v. Kelley* (C. C. A. 2, 1932), 55 F. (2d) 67.

The application of Section 995, Penal Code of California<sup>8</sup> is equally untenable, assuming for argument that its effect must be examined. The section applies only to *indictments* or *informations*. Every public offense in California must be prosecuted by indictment or information, except, among others, "offenses tried in municipal, justices' and police courts." Penal Code, Section 682. Those courts have exclusive jurisdiction of misdemeanors. Penal Code, Section 1462 (municipal courts), Section 1425 (Justices' courts), Section 1461 (police courts). Before those courts proceedings are commenced by complaint and *no* indictment or information is used. Penal Code, Section 1426. Therefore Section 995, applying only to indictments or informations, which are to be used only in felony cases, does not govern misdemeanors; as the instant cause is a misdemeanor, that section has no relevancy herein.

Basically, appellant's objection to the information seems to relate to the filing thereof on the grounds that (a) the verification did not show any reasonable or probable cause and (b) the court failed in its alleged duty to take evidence to see if such cause were present. That objection

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<sup>8</sup>§995. The indictment or information must be set aside by the court in which the defendant is arraigned, upon his motion in either of the following cases:

If it be an indictment:

1. Where it is not found, indorsed, and presented as prescribed in this code.

If it be an information:

1. That before the filing thereof the defendant had not been legally committed by a magistrate.

2. That the defendant had been committed without reasonable or probable cause.



is instantly disposed of by the case of *Wagner v. United States* (C. C. A. 9, 1925), 3 F. (2d) 864, wherein it was stated:

"On the presentation of the case in this court, however, the plaintiffs in error raised the additional question of the jurisdiction of the court below, on the ground that the information was not based on probable cause, as required by the Fourth Amendment to the Constitution, nor upon a finding of probable cause by any court, judge, or commissioner, nor upon any preliminary hearing to ascertain whether there was probable cause.

"This and other courts have held that the verification of an information is not required by any statute, and that it is only where the issuance of a warrant of arrest is sought upon this information that there must be an affidavit of one who knows the facts. *Weeks v. United States*, 216 F. 292, 132 C. C. A. 436, L. R. A. 1915B, 651, Ann. Cas. 1917C, 524; *Brown v. United States*, 257 F. 703, 168 C. C. A. 653; *Carney v. United States* (C. C. A.), 295 F. 607; *Farinelli v. United States* (C. C. A.), 297 F. 198. Here there is no question of the legality of a warrant of arrest, nor does it appear from the transcript that any such warrant was ever issued or applied for."

In the instant cause a warrant was applied for and issued, but the information was verified by the investigator as "true of his own knowledge" [R. 5]. Such a verification fulfills constitutional requirements. *Brown v. United States* (C. C. A. 9, 1919), 257 Fed. 703, cert. den. 251 U. S. 554; *Cf. Benn v. United States* (C. C. A. 9, 1928), 28 F. (2d) 509. Further, no motion to quash the warrant was ever made [R. 16].



V.

**Appellant Cannot Question the Sufficiency of the Instructions Because He Made No Request for Further Instructions or Excepted to Those Given on the Ground of Insufficiency nor Was Appellant Denied Due Process of Law. (Answer to Appellant's Point VII.)**

Appellant contends that the Court should have more fully and comprehensively instructed the jury concerning the provisions of Ration Order 5C because, as appellant believes, the order had been amended more than one hundred times and the jury should have been told what it allowed or forbade. Appellee sees no merit in such a contention.

However, whatever may be appellant's present position, the trial court committed no error. Appellant did not request any such charge as he now claims the court should have made [R. 133] nor did he take exception to any failure to so charge [R. 130]. Until a request is presented there is no opportunity for the court to make a ruling, and, when no request is made, there is no ruling. The trial court properly covered the issues and any failure to instruct cannot be assigned as error. Moreover, appellant did not assign as error the failure to so instruct [R. 142, 143]. *Bradshaw v. United States* (C. C. A. 9, 1926), 15 F. (2d) 970.

Appellant did not except to [R. 130] and assign as error [R. 143] the instruction given wherein Ration Order 5C was quoted. That such was not error has been hereinbefore discussed. At no time did appellant except to the giving thereof for the reason now proposed. For example,

in his grounds of appeal [R. 33], no such error was claimed. No error can therefore now be predicated. Local Rule 14(b); *Gilson v. United States* (C. C. A. 2. 1919), 258 Fed. 588. In this case it was stated:

“On due request the trial judge might, and doubtless would, have descended into greater particularity in respect of the overt acts charged and proven. But as a general proposition of law the charge was so plainly right as to need no justification; and in so far as it was insufficient or too general in respect of this particular case or these particular defendants, the exception did not fairly or at all direct the attention of the court to the insufficiency now complained of. The exception was not sufficiently definite to call the court’s attention to the particular matter objected to, and give opportunity to correct it.”

### Conclusion.

For the foregoing reasons, we contend the judgment below should be affirmed.

Respectfully submitted,

CHARLES H. CARR,  
*United States Attorney.*

JAMES M. CARTER,  
*Assistant United States Attorney.*

ARTHUR LIVINGSTON,  
*Assistant United States Attorney.*  
*Attorneys for Appellee.*

No. 10607

IN THE

# United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

---

LESTER ARTHUR CORSON,

*Appellant,*

*vs.*

UNITED STATES OF AMERICA,

*Appellee.*

---

## PETITION FOR REHEARING.

---

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JAN 31 1945





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PETITION FOR REHEARING.

---

Comes now the United States of America, appellee in the above entitled cause and presents this, its Petition for Rehearing of the above entitled cause, and in support thereof respectfully shows:

**Statement of Grounds for Rehearing.**

That the opinion of this Honorable Court, reversing the judgment of conviction in the above entitled case:

(1) Misconstrues and overlooks the factual situation on which the conviction was based and the application of the instructions as given to said factual situation.

(2) Considers the instructions given in the trial court as applying to a factual situation which did not exist in the trial of the case.

(3) Disregards entirely the rule that error must be prejudicial before a conviction will be reversed.

(4) Ignores the fact that no instructions were requested by the defendant, appellant herein, as to the manner in which a transfer of gas coupons could be made in accordance with Ration Order 5 C.

(5) Ignores the fact that the instruction which this Court claims sets no standard of conduct was an instruction requested by the appellant.

(6) Ignores the fact that the point upon which this Court reversed the conviction was never raised in the trial court, and that the trial Judge therefore did not have his attention directed to the purported source of error.

(7) Ignores the fact that although an exception was taken to the instructions, no exception was taken to the particular instruction upon which the Court bases its reversal, except upon general constitutional grounds.

(8) Ignores the rule that the appellant had the burden of showing by his defense and by proper instructions proposed by him, the legality of the transfer if he so claimed.

(9) Reverses the conviction of a man, plainly guilty, who has a prior criminal record, because of the giving of instructions, one of which was requested by the appellant, which were not excepted to by the appellant, except upon constitutional grounds, upon an issue which was never raised in the trial court; and that the said opinion purports to turn on an issue which is not and was not in the case, to-wit, the *method* by which a legal transfer *might* be made.



### Questions of Law.

(1) Did the District Judge commit reversible error by the "failure to instruct the jury respecting the content of Ration Order No. 5 C as amended to the date of the Information \* \* \*" (quoting from the opinion)?

(2) Were the Court's instructions sufficient, in view of the limited factual issue in the case?

(3) Was the instruction given by the District Judge as to the content of Section 1394.8177 of Ration Order No. 5 C a correct statement of that portion of Ration Order No. 5 C as it then read, in view of prior amendments to Ration Order No. 5 C?

(4) Can the appellant complain of an instruction which he himself requested?

(5) Can the appellant complain of an instruction to which he did not except?

(6) Can the appellant, having made an exception to the instruction on Section 1394.8177 of Ration Order No. 5 C, based upon his contention that Congress cannot make a delegation of powers, thereafter raise for the first time on appeal a new contention under said exception?

(7) Was there any prejudicial error or miscarriage of justice?

(8) Did the Information fail to state a public offense, having in mind that no bill of particulars was asked for?

The questions will be considered under the following headings:

(1) The District Court did not err in instructing the jury.

(2) The Information states an offense against the United States.

### Statement of Facts.

The factual situation has not been set forth in the opinion.

The facts as set forth below will show that *the real issue tried by the jury, was whether or not Corson made a transfer of "TT" coupons to one Thompson and not the issue of whether or not the transfer was made in a manner in accordance with Ration Order No. 5 C.*

The facts showed that John E. Foster and Jona H. Taylor, investigators for the OPA on September 2, 1943, arrested Edgar E. Thompson [R. 70]; that they searched his person and his car and then followed him while he went to a used car lot, where he met the defendant Corson [R. 71]; that Foster and Taylor parked across the street, and while Thompson was at all times within their vision, saw him talk to Corson and saw Corson take from his inside coat pocket a white folded package 12" to 14" long and 3" to 4" wide and hand it to Thompson. Thompson placed it in the inside right hand pocket of his loafer jacket [R. 74].

Immediately Taylor and Foster crossed the street, apprehended Corson and Thompson. In the right hand outside pocket of Thompson's loafer jacket were found four sheets of "TT" gas coupons used by and issued to fleet owners. These sheets of ration coupons were received in evidence as Government's Exhibits No. 1, 2, 3 and 4. Exhibits No. 1, 2 and 3 consisted of 240 coupons each and Exhibit 4 consisted of 80 coupons, making a total of

800 coupons, each good for 5 gallons of gasoline, equivalent to 4000 gallons [R. 76].

Corson was arrested and the Information filed.

Upon cross-examination counsel for appellant brought out from the witness John E. Foster that Thompson had said to Foster that he had an appointment to buy some stamps on that day, that he was due at the car lot at that time and that he would keep his appointment, and that accordingly Foster and Taylor followed him to the car lot where they observed the transfer of coupons [R. 80].

Lester Arthur Corson, the defendant and appellant herein took the witness stand. He stated he was in the used car business [R. 114].

He positively denied any transfer or assignment of gasoline ration coupons to Thompson [R. 116]. "I did not at any time transfer or assign any gasoline ration coupons to him (Thompson). I did not at any time transfer 800 type "TT" gasoline coupons. I did not go anywhere into my lot and get any 800 "TT" gasoline coupons" [R. 116].

On cross-examination Corson stated [R. 118] "I am not in the trucking business, I never had issued to me by any ration board Government's Exhibits 1, 2, 3 and 4. I don't claim to have any right to the possession of these \* \* \*. The only paper I had was when he (Thompson) handed me the pink and white slip and I handed it back to him".

From the foregoing it is crystal clear that Corson, a used car salesman had never had the "TT" coupons issued to him, did not claim any right to the possession of them and denied he had ever received them, and the sole factual issue in the case was a very simple question—

*Did Corson, on September 2, 1943, transfer to Thompson 800 "TT" gas ration coupons?*

There was no issue as to how and in what manner Corson might have made a transfer of the coupons to Thompson, under some provision of Ration Order 5 C.

The Government is of the opinion that the factual problem before a District or Circuit Court should be considered in connection with any decision rendered, and that this Court cannot ignore the fact that the sole issue was the one above stated, and that with this issue in mind the instructions given by the District Judge were proper and sufficient instructions.



## ARGUMENT.

### I.

#### The District Court Did Not Err in Instructing the Jury.

##### (1) The Instructions of the Court as Applied to the Facts in Issue Were Not Erroneous.

The ultimate issue of fact before the jury was whether or not appellant Corson transferred 800 "TT" coupons to Thompson. Corson made no contention that he made the transfer or was entitled to make the transfer but testified he was a used car salesman [R. 114], that the coupons had not been issued to him by any ration board [R. 118] and that he made no claim to the possession of them.

With these facts in mind the Government submits that it was unnecessary and probably would have been an error for the court to have given the jury instructions as to how transfers might be made, in accordance with Ration Order 5 C. The District Court believed this unnecessary and merely instructed the jury in the language of Ration Order No. 5 C, Section 1394.8177, that no person shall assign or transfer any gasoline coupons except in accordance with the provisions of the Ration Order.

The fact that the transfer might be made in accordance with Ration Order 5 C is a defense to the charge herein. The lawful means of transferring gasoline coupons (in exchange for gasoline) is an exception to the general prohibition of transferring them in any other way. And the

burden of bringing himself within such a defense or exception is upon the defendant.

*McKelvey v. United States*, 260 U. S. 353 (1922);

*Williams v. United States*, 138 Fed. (2d) 81 (C. A. D. C. 1943);

*Greene, Moore & Company v. United States*, 19 Fed. (2d) 130 (C. C. A. 5th 1927);

*Merritt v. United States*, 264 Fed. 870 (C. C. A. 9th 1920).

He has not assumed that burden and thus any instructions upon the method of transfer are not necessary. The defendant's counsel also must have recognized that fact for he did not request further detailed instructions or object and except to those given on the ground of insufficiency. To find otherwise would be to find that the defendant's counsel invited error.

*The Government submits that this Court in rendering its decision in the above entitled matter, has overlooked completely the factual situation that was presented and the application of the instructions to that factual situation; that this Court has ignored the fact that the case was tried upon the factual issue as to whether or not there was actually a transfer of the coupons, and not upon any issue or upon any defense that a transfer had been made in accordance with Ration Order 5 C.*

**(2) Section 1394.8177 of Ration Order No. C as Given to the Jury Was Within the Correct Wording of the Section as It Then Stood.**

There is language in the decision from which it might be inferred that this Court entertained some belief that Section No. 1394.8177 of Ration Order No. 5 C as given to the jury might have been amended so that the instruction as given did not correctly state the context of the section. We make this observation for the reason that during the trial and on the appeal, counsel for the appellant repeatedly complained of a number of amendments to Ration Order No. 5 C and of his inability to ascertain what the regulations provided. We do not believe the court meant its language in such sense. The court can take judicial notice of the regulations in Ration Order No. 5 C and therefore notes that the section as given in the instruction was the correct wording of the section.

**(3) The Appellant Requested in the Trial Court the Instruction Which This Honorable Court Holds Fixed No Standard of Conduct.**

The Record contains the only instructions requested by the defendant [R. 133, 134]. They were five in number.

The giving of defendant's requested instruction No. 1 [R. 133] was obviated when the Government elected to rely upon count No. 2. The wording of the first paragraph of defendant's requested instruction No. 2 [R. 133] was obviated when the Government elected to stand on the transfer count, two of the Information.

The court fully charged the jury as to reasonable doubt [R. 126, 127].



In the third paragraph of defendant's requested instruction No. 3 [R. 134] appears the language which was used verbatim by the court in its instructions [R. 129.] *This instruction was requested by the defendant and given exactly as requested, and yet this Court has ruled that the giving of such instruction fixed no standard of conduct.* We respectfully submit that appellant cannot complain of the instruction requested by him.

**(4) Appellant Did Not Except to the Instructions Except Upon a Constitutional Ground.**

It is obvious that the appellant would not and could not except to an instruction which he himself requested. It is interesting to read the Record [R. 131] in connection with the exception which was noted. Throughout the proceeding the appellant continually raised Constitutional objections to the Information. In the *Motion to Quash* [R. 6-7] Point I contended that the Information failed to charge a public offense. Points 2 to 9 inclusive raised Constitutional questions. Point 12 referred generally to Point I contended that the Information failed to charge a public offense. Points 2 to 9 inclusive raised questions of the Constitutionality of the proceeding.

In the *Motion for a new trial* [R. 21, 22, 23] Point 1 raised the general point that the verdict was contrary to the law in the evidence. Point 2, that the Information was filed without probable cause. Point 3, that it failed to state a public offense. (Points 4 to 11 inclusive raised Constitutional questions.) Point 12 referred generally to errors in rulings during the trial. Point 13 stated the "Court erred in instructions given and particularly in giving the instruction that a crime exists through violation of an executive order" [R. 23]. Point 14 contended



there was no probable cause for the filing of the Information and that the proceedings violated Section 591, Title 18 U. S. C. A. and Section 995 of the Penal Code, State of California. Point 15 made the contention that there had been 82 amendments to Ration Order No. 5 C and that an amendment or change repeals the regulation. Point 16 contends the Information was sworn to improperly.

In the *Motion in arrest of Judgment* [R. 26, 27 and 28] the same identical points were made as in the Motion for a New Trial.

In the *grounds for appeal* [R. 33, 34] Point 1 contends generally that the evidence was insufficient to support a conviction. Point 2, that the verdict was contrary to law and evidence. Point 3, that no public offense was stated. Point 4, that there was no probable cause upon which the Information was based. Point 5, that the court in rulings during the trial and on the Motion for a New Trial and in arrest of Judgment. Point 6 stated "The Court erred in instructions given, particularly on the question of violation of law created by Executive Order" [R. 34]. Points 7, 8 and 9 raised Constitutional questions.

The only other portion in the Record as printed where any purported exceptions appear, is that portion of the Record at pages 135, 136 and 137. These are the general collection of exceptions which it is the practice of the attorney for petitioner to insert in his bill of exceptions after the trial of the case. It apparently does not concern counsel for appellant whether or not the exceptions were actually taken or noted. It is submitted that the Record affirmatively shows that certain of the exceptions purportedly taken as listed at pages 135 to 137 do not appear in the Record and have merely been added above the signa-

ture of counsel for the appellant, under the general heading "exceptions".

Within these purported exceptions is included No. 13, in which Counsel purports to have excepted to the instruction of the Court in giving the instruction containing Section 1394.8177 of Ration Order No. 5 C. The Record does not bear him out.

After the instructions were given by the Court, the Court inquired of Counsel for the appellant if he had any exceptions [R. 130]. There then follows the statement of counsel in which he again attempts to raise the Constitutional question which he had repeatedly raised throughout the trial. The Court replied, "A portion of those instructions were taken from the instructions you yourself proposed, Mr. Levine:

"Mr. Levine: Not that one I am referring to, Your Honor. The one I am referring to now is one Your Honor gave from the Government's instructions.

The Court: The portion of the definition of the Section about Ration Order No. C is that what you meant?

Mr. Levine: That is right. Exception noted.

The Court: All right." [R. 131.]

*It is submitted that this sole exception to the instructions of the Court was based by the very words of counsel for the appellant upon the constitutional contentions which he then raised.*

The Government submits that no exception was taken to the instructions quoted in the opinion in the 4th paragraph on page 3 thereof, and that the only exception taken to the instruction quoted in the 3rd paragraph of page 3, was the exception based upon constitutional grounds.

**(5) There Was No Prejudicial Error or Miscarriage of Justice in the Case.**

It is and should be policy of the Appellate Courts in the Federal Judicial system not to reverse convictions unless there has been prejudicial error or a miscarriage of justice. The Government submits that neither existed herein. From the facts stated in this petition, it is apparent that the defendant trafficked in "TT" gasoline ration coupons, that he was in the used car business and was not a truck operator [R. 118].

*Title 18 USC §556 states in part:*

"\* \* \* nor shall the trial, judgment or other proceedings thereon be affected by reason of any defect or imperfection in matter of form only which shall not tend to the prejudice of the defendant".

*It is obvious from the Record and from the facts which were in issue before the jury, that had the Court given the jury the complete text of Ration Order No. 5 C and pointed out the method by which legal transfers could be made, there could have been no different result, since the defendant denied making the transfer and in substance took the position that he would stand or fall on the question as to whether or not he had transferred the coupons to Thompson.*



## II.

### The Information States an Offense Against the United States.

While the Court bases its reversal solely upon the failure to sufficiently instruct the jury, it does remark upon the "claimed sufficiency of the information". Appellee, therefore, believes that in this Motion for Rehearing, it should consider the comments of the Court upon that point and reemphasize that Count Two of the Information sufficiently charges an offense.

The government alleged the offense in the words of the statute and order. That such a method is sufficient, provided the statute and order set forth all the elements of the crime, has been universally held. This Court has recognized the method in *Peters v. United States*, 94 F. 127 (1899). In *Ledbetter v. United States*, 170 U. S. 606, 18 S. Ct. 774, 42 L. Ed. 1162 (1898), the Court, after reviewing the method of alleging the offense in the words of the statute, stated:

"Notwithstanding the cases above cited from our reports, the general rule still holds good that upon an indictment for a statutory offense the offense may be described in the words of the statute, and it is for the defendant to show that greater particularity is required by reason of the omission from the statute of some element of the offense. Where the statute completely covers the offense, the indictment need not be more complete by specifying particulars elsewhere obtained."

It would seem, however, that this Court is not so much concerned with the allegations of the elements of the crime as it is with the fact that the defendant is not informed as to the "inhibition in the law (he) is accused



of having violated". That is, there may be a failure to apprise the defendant of what he must be prepared to meet. The defendant makes no such claim. But, aside from that fact, the allegation "in a manner other than in accordance with the provisions of Ration Order 5 C (7 Fed. Reg. 9135), as Amended" does inform the defendant fully of the nature of the charge and the law he is alleged to have violated so as to enable him to prepare any defense he may have. Further, because judicial notice must be taken of the Ration Order 5 C, it is not necessary to more fully allege the provisions thereof. Title 44 U. S. C. §307; *United States v. Casey*, 247 F. 362 (D. C. E. D. Ohio, 1918); *Zusiak v. United States*, 119 F. (2d) 140 (C. C. A. 9th 1941).

Ration Order 5 C provides under title "General Provisions with Respect to Transfers and Use" and the subdivision thereof on "Restrictions on Transfers" that there shall be no transfer of gasoline except in exchange for valid coupons (Section 1394.8152). The subdivision following is entitled "Prohibited Acts" and includes the section charged herein. The assumed difficulty of defendant's counsel in finding out exactly what defendant was charged with bears little weight in face of the argument that all counsel had to do would be to quickly refer to the Ration Order which was published in the Federal Register and of which he must take notice. The defendant, therefore, knew as a matter of law that he was charged with transferring the coupons involved without receiving gasoline therefor. The matter is as simple as that and the defendant's attempt to hide behind a cloak of difficulty is a

sham both from a practical as well as a legal standpoint. Had he been serious in his contention, rather than desirous of raising a technicality, a Motion for Bill of Particulars would have solved his uncertainty.

Appellee will not reiterate the argument made in Point I of its brief except to state that the rule enunciated in the *Peters* case when applied to the information herein, indicates the sufficiency thereof. However, appellee does desire to refer to a few cases in which general allegations similar to that complained about in the instant case have been held sufficient in the face of like objections.

In *Ledbetter v. United States, supra*, the indictment charged, in the words of the statute, that the defendant did "carry on the business of a retail liquor dealer without having paid the special tax therefor, as required by law". The sufficiency of the indictment was attacked on the ground that it did not state facts constituting an offense because it should have set forth the particular facts which showed that the defendant was a retail liquor dealer and that he had not paid the tax of \$25.00 provided by law. The Court held that the indictment was sufficient because it alleged the crime in the words of the statute and the *particulars which the defendant desired were elsewhere obtained*, to-wit: in the statute.

Likewise, in *Taran v. United States*, 88 F. (2d) 54 (C. C. A. 8th 1937), the indictment charged the defendant with carrying on the business of a wholesale liquor dealer in one count and a retail liquor dealer in the second count. These two counts were challenged by demur-

rer as being insufficient because they were indefinite, vague and uncertain in that they did not set out any acts or facts which were claimed to constitute these offenses. The Court stated as follows:

"The function and purpose of the indictment is to advise the accused of the nature of the accusation against him, with such certainty as to enable him to prepare his defense, and so that he may not be taken by surprise by the evidence offered at the trial, also that he may be protected after judgment against another prosecution for the same offense. *Wolpa v. United States* (C. C. A. 8) 86 F. (2d) 35. It is generally sufficient to charge a statutory offense in the language of the statute, particularly if the statute expressly defines the offense. *Galatas v. United States* (C. C. A. 8) 80 F. (2d) 15; *Myers v. United States* (C. C. A. 8) 15 F. (2d) 977, *Ledbetter v. United States*, 170 U. S. 606, 18 S. Ct. 774, 42 L. Ed. 1162. Counts 1 and 2 of the indictment followed the language of the statute, and the statute specifically defines what constitutes a 'retail liquor dealer' and what constitutes a 'wholesale liquor dealer.' One who sells in quantities of less than five gallons is by the specific wording of the statute made a retail liquor dealer, while one who sells in quantities in excess of five gallons is made a wholesale liquor dealer. The defendant, therefore, knew as a matter of law that he was charged by the first count with selling liquor in quantities of less than five gallons, and that by the second count he was charged with selling liquor in quantities in excess of five gallons. It was not essential to set out the particular acts constituting the business, where, as here, the statute specifically defines what acts constitute such business."



In *Pounds v. United States*, 171 U. S. 35, 18 S. Ct. 729, 43 L. Ed. 62 (1898), the indictment charged the concealment of distilled spirits "which said spirits had been removed to a place other than the distillery warehouse provided by law" in the words of the statute. It was claimed that the indictment was too uncertain to sustain the judgment because it did not inform the defendant that a warehouse was provided in which the spirits which he is charged to have concealed should have been stored until the tax was paid. The Court held the indictment sufficient because it was enough to charge the defendant "with acts coming within the statutory description in the substantial words of the statute without any further explanation of the matter". In *Hanks v. United States*, 97 F. (2d) 309 (C. C. A. 4th 1938), the Court held that the very allegation considered in the *Pounds* case was sufficient to negative the exception to the law because it was not necessary to allege all the elements of the offense with technical precision.

In *Ruffino v. United States*, 114 F. (2d) 696 (C. C. A. 9th 1940), the indictment charged that the defendant was not a person permitted to acquire gold bullion pursuant to Treasury regulations. There was no other allegation showing why the defendant was not such a person or what the regulations were that prevented him from acquiring the bullion. But this Court held that the language substantially negated the possession of a license which was apparently necessary. It should be noted that



the ruling was *dictum* because it concerned an allegation in connection with defensive matter which need not have been alleged in the first place; however, the Court made a specific ruling which it felt correct.

In *Zuziak v. United States, supra*, in which the defendant was convicted of a violation of the Selective Training and Service Act of 1940, this Court went so far as to hold that there was no need to plead the issuance or violation of regulations because the Court took judicial notice thereof and that as such indictment fully informed the accused of the nature of the charge so as to enable him to prepare any defense he might have, nothing more specific in the matter of form was required.

As pointed out on page 6 of Appellee's Brief, the defendant does not claim any prejudice in this matter. He only claims that he could not or that it was difficult to find the particular Ration Order even though the citation to the Federal Register was alleged in the information. It is contended that the information fully informs the defendant of all the elements of the crime with sufficient certainty for him to prepare his defense or to raise the plea of second jeopardy, if necessary. Certainly, the allegation in connection with the order is no more indefinite or insufficient than those which have been upheld in this and other courts. Any complaint made to the information would seem to be a pure technicality upon which a reversal cannot be urged. See:

*Hopper v. United States*, 142 F. (2d) 181 (C. C. A. 9th, 1943).

### Conclusion.

It is respectfully submitted that the instructions of the court were sufficient in view of the facts of the case as presented to the jury and that no prejudicial error was committed by the court in failing to give further instructions. It is further submitted that the Information states a public offense under the laws of the United States and that a petition for rehearing should be granted and the judgment affirmed.

Respectfully submitted,

CHARLES H. CARR,  
*United States Attorney,*

JAMES M. CARTER,  
*Asst. United States Attorney,*

ARTHUR LIVINGSTON,  
*Asst. United States Attorney,*  
*Counsel for Appellee.*

**Certificate of Counsel.**

We, counsel for the United States of America, appellee in the above entitled cause, do hereby certify that the foregoing Petition for Rehearing of this cause in our opinion is well founded and is not interposed for delay.

CHARLES H. CARR,

*United States Attorney,*

JAMES M. CARTER,

*Asst. United States Attorney,*

ARTHUR LIVINGSTON,

*Asst. United States Attorney,*

*Counsel for Appellee.*





No. 10740

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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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HUGH WILTON,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

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Transcript of Record

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Upon Appeal from the District Court of the United States  
for the Southern District of California,  
Central Division

FILED

APR 3 - 1945

PAUL P. O'BRIEN,  
CLERK



No. 10740

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United States  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Bldg., Los Angeles 12, Calif.

At a stated term, to-wit: The September Term, A. D. 1944, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Friday the 28th day of January in the year of our Lord one thousand nine hundred and forty-four.

Present: The Honorable J. F. T. O'Connor,  
District Judge.

No. 16,512-Crim.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HUGH WILTON,

Defendant.

Ray H. Kinnison, Esq., Assistant U. S. Attorney, appearing for the Government, requests permission to file an amended information herein, and it is so ordered.

This Amended Information contains Seven (7) Counts charging Hugh Wilton, with the violation of Rent Regulation for Housing issued pursuant to the Emergency Price Control Act of 1942 (The Maximum penalty on each Count consists of one (1) year imprisonment and/or fine of Five Thousand Dollars (\$5,000.00), or both, with no minimum penalty provided.)



In the District Court of the United States, Southern District of California, Central Division

No. 16512

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HUGH WILTON,

Defendant.

### AMENDED INFORMATION

Comes now Charles H. Carr, United States Attorney in and for the Southern District of California, Central Division, who for the United States and in its behalf, prosecutes in his own proper person, and with leave of Court first had and obtained, gives the Court here to understand and be informed as follows, to-wit:

### COUNT ONE

1. That the defendant, Hugh Wilton, during all times herein mentioned was and now is the operator of that certain apartment building hereinafter described, and as such operator was and now is in charge of the renting and offering for rent of the housing accommodations contained therein; that on or about the 30th day of October, 1943, in the City of Los Angeles, County of Los Angeles, State of California, in the Southern District of California, and in the Central Division thereof, and within the jurisdiction of this Court, said defendant, Hugh

Wilton, as such operator, did knowingly, wilfully and unlawfully demand of and receive from Mr. and Mrs. Edgar M. Mathews, rent in the amount of Twenty Dollars (\$20.00) as two (2) week's rent for the period September 28th, 1943 to October 12th, 1943, for the housing accommodations consisting of Apt. #16 in the apartment building located at 441 North Figueroa Street, in said City of Los Angeles, and within the Los Angeles Defense Rental Area, which said apartment unit at all times herein mentioned had a maximum rent for said two (2) week's period of \$8.00, under Rent Regulation for Housing, (8 Fed. Reg. 7322), issued by the Administrator of the Office of Price Administration, pursuant to Section 2 of the Emergency Price Control Act of 1942, Pub. L. 421, 77th Cong. 2d Sess., 56 Stat. 23, January 30, 1942); contrary to the form of the Statute in such case made and provided and against the peace and dignity of the United States (Emergency Price Control Act of 1942, Pub. L. 421, 77th Cong. 2d Sess., 56 Stat. 23, January 30, 1942).

## COUNT TWO

Said United States Attorney further informs the Court:

1. That the defendant, Hugh Wilton, during all times herein mentioned was and now is the operator of that certain apartment building hereinafter described, and as such operator was and now is in charge of the renting and offering for rent of the housing accommodations contained therein; that on

or about the 8th day of December, 1943, in the City of Los Angeles, County of Los Angeles, State of California, in the Southern District of California, and in the Central Division thereof, and within the jurisdiction of this Court, said defendant, Hugh Wilton, as such operator, did knowingly, wilfully and unlawfully demand of and receive from Mr. and Mrs. Paul W. Shipton, rent in the amount of Twenty-two Dollars (\$22.00) as two (2) week's rent in advance for the period December 8, 1943 to December 22nd, 1943, for the housing accommodations consisting of Apt. #9, in the apartment building located at 441 North Figueroa Street, in said City of Los Angeles, and within the Los Angeles Defense Rental Area, which said apartment unit at all times herein mentioned had a maximum rent for said two (2) week's period of Nine Dollars (\$9.00) under Rent Regulation for Housing, (8 Fed. Reg. 7322), issued by the Administrator of the Office of Price Administration, pursuant to Section 2 of the Emergency Price Control Act of 1942, Pub. L. 421, 77th Cong. 2d Sess., 56 Stat. 23, January 30, 1942); contrary to the form of the Statute in such case made and provided and against the peace and dignity of the United States (Emergency Price Control Act of 1942, Pub. L. 421, 77th Cong. 2d Sess., 56 Stat. 23, January 30, 1942).

### COUNT THREE

Said United States Attorney further informs the Court:

1. That the defendant, Hugh Wilton, during all times herein mentioned was and now is the opera-



tor of that certain apartment building hereinafter described, and as such operator was and now is in charge of the renting and offering for rent of the housing accommodations contained therein; that on or about December 1, 1943, in the City of Los Angeles, County of Los Angeles, State of California, in the Southern District of California, and in the Central Division thereof, and within the jurisdiction of this Court, said defendant, Hugh Wilton, as such operator, did knowingly, wilfully and unlawfully demand of and receive from Mr. and Mrs. Claude W. Hoffman, rent in the amount of Twenty Dollars (\$20.00) as two (2) weeks' rent in advance for the period December 1, 1943 to December 15, 1943, for the housing accommodations consisting of Apt. #10 in the apartment building, located at 441 North Figueroa Street, in said City of Los Angeles, and within the Los Angeles Defense Rental Area, which said apartment unit at all times herein mentioned had a maximum rent of Ten Dollars (\$10.00) for said two (2) weeks' period, under Rent Regulation for Housing, (8 Fed. Reg. 7322), issued by the Administrator of the Office of Price Administration, pursuant to Section 2 of the Emergency Price Control Act of 1942, Pub. L. 421, 77th Cong. 2d Sess., 56 Stat. 23, January 30, 1942); contrary to the form of the Statute in such case made and provided and against the peace and dignity of the United States (Emergency Price Control Act of 1942, Pub. L. 421, 77th Cong. 2d Sess., 56 Stat. 23, January 30, 1942).



## COUNT FOUR

Said United States Attorney further informs the Court:

1. That the defendant, Hugh Wilton, during all times herein mentioned was and now is the operator of that certain apartment building hereinafter described, and as such operator was and now is in charge of the renting and offering for rent of the housing accommodations contained therein; that on or about December 20, 1943, in the City of Los Angeles, County of Los Angeles, State of California, in the Southern District of California, and in the Central Division thereof, and within the jurisdiction of this Court, said defendant, Hugh Wilton, as such operator, did knowingly, wilfully and unlawfully demand of and receive from Mr. and Mrs. H. G. Yost, rent in the amount of Ten Dollars (\$10.00) as one (1) week's rent for the period December 18, 1943 to December 25, 1943, for the Housing accommodations consisting of Apt #11, in the apartment building located at 441 North Figueroa Street, in said City of Los Angeles, and within the Los Angeles Defense Rental Area, which said apartment unit at all times herein mentioned had a maximum rent of Four Dollars and Fifty Cents (\$4.50) for said one (1) week's period, under Rent Regulation for Housing, (8 Fed. Reg. 7322), issued by the Administrator of the Office of Price Administration, pursuant to Section 2 of the Emergency Price Control Act of 1942, Pub. L. 421, 77th Cong. 2d Sess., 56 Stat. 23, January 30, 1942); contrary to the form of the Statute in such case made and

provided and against the peace and dignity of the United States (Emergency Price Control Act of 1942, Pub. L. 421, 77th Cong. 2d Sess., 56 Stat. 23, January 30, 1942).

## COUNT FIVE

Said United States States Attorney further informs the Court:

1. That the defendant, Hugh Wilton, during all times herein mentioned was and now is the operator of that certain apartment building hereinafter described, and as such operator was and now is in charge of the renting and offering for rent of the housing accommodations contained therein; that on or about the 11th day of December, 1943, in the City of Los Angeles, County of Los Angeles, State of California, in the Southern District of California, in the Central Division thereof, and within the jurisdiction of this Court, said defendant, Hugh Wilton, as such operator, did knowingly, wilfully and unlawfully demand of and receive from Mr. and Mrs. Mike Green, rent in the amount of Ten Dollars (\$10.00) as one (1) week's rent for the period December 11, 1943 to December 18, 1943, for the housing accommodations consisting of Apt. #3, in the apartment building located at 425 North Figueroa Street, in said City of Los Angeles, and within the Los Angeles Defense Rental Area, which said apartment unit at all times herein mentioned had a maximum rent of Three Dollars and Seventy-five Cents (\$3.75) for said one (1) week's period, under Rent Regulation for Housing, (8 Fed. Reg.

7322), issued by the Administrator of the Office of Price Administration, pursuant to Section 2 of the Emergency Price Control Act of 1942, Pub. L. 421, 77th Cong. 2d Sess., 56 Stat. 23, January 30, 1942); contrary to the form of the Statute in such case made and provided and against the peace and dignity of the United States (Emergency Price Control Act of 1942, Pub. L. 421, 77th Cong. 2d Sess., 56 Stat. 23, January 30, 1942).

### COUNT SIX

Said United States Attorney further informs the Court:

1. That the defendant, Hugh Wilton, during all times herein mentioned was and now is the operator of that certain apartment building herein-after described, and as such operator was and now is in charge of the renting and offering for rent of the housing accommodations contained therein; that on or about the 6th day of December, 1943, in the City of Los Angeles, County of Los Angeles, State of California, in the Southern District of California, and in the Central Division thereof, and within the jurisdiction of this Court, said defendant, Hugh Wilton, as such operator, did knowingly, wilfully and unlawfully demand of and receive from Mr. John Doe Bower, whose other and true given name is unknown to said United States Attorney, and Mrs. Georgia Bower, rent in the amount of Ten Dollars (\$10.00) as one (1) week's rent for the period December 5, 1943 to December 12, 1943, for the housing accommodations consisting of Apt. #4,



in the apartment building located at 435 North Figueroa Street, in said City of Los Angeles, and within the Los Angeles Defense Rental Area, which said apartment unit at all times herein mentioned had a maximum rent for said one (1) week's period of Four Dollars and Thirty-eight Cents (\$4.38) under Rent Regulation for Housing, (8 Fed. Reg. 7322), issued by the Administrator of the Office of Price Administration, pursuant to Section 2 of the Emergency Price Control Act of 1942, Pub. L. 421, 77th Cong. 2d Sess., 56 Stat. 23, January 30, 1942); contrary to the form of the Statute in such case made and provided and against the peace and dignity of the United States (Emergency Price Control Act of 1942, Pub. L. 421, 77th Cong. 2d Sess., 56 Stat. 23, January 30, 1942).

### COUNT SEVEN

Said United States Attorney further informs the Court:

1. That the defendant, Hugh Wilton, during all times herein mentioned was and now is the operator of that certain apartment building hereinafter described, and as such operator was and now is in charge of the renting and offering for rent of the housing accommodations contained therein; that on or about the 14th day of December, 1943, in the City of Los Angeles, County of Los Angeles, State of California, in the Southern District of California, and in the Central Division thereof, and within the jurisdiction of this Court, said defendant, Hugh Wilton, as such operator, did knowingly, wilfully



and unlawfully demand of and receive from Mr. John Doe Bower, whose other and true given name is unknown to said United States Attorney, and Mrs. Georgia Bower, rent in the amount of Ten Dollars (\$10.00) as one (1) week's rent for the period December 12, 1943 to December 19, 1943 for the housing accommodations consisting of Apt. #4, in the apartment building located at 435 North Figueroa Street, in said City of Los Angeles, and within the Los Angeles Defense Rental Area, which said apartment unit at all times herein mentioned had a maximum rent of Four Dollars and Thirty-eight Cents (\$4.38) for said one (1) week's period, under Rent Regulation for Housing, (8 Fed. Reg. 7322), issued by the Administrator of the Office of Price Administration, pursuant to Section 2 of the Emergency Price Control Act of 1942, Pub. L. 421, 77th Cong. 2d Sess., 56 Stat. 23, January 30, 1942); contrary to the form of the Statute in such case made and provided and against the peace and dignity of the United States (Emergency Price Control Act of 1942, Pub. L. 421, 77th Cong. 2d Sess., 56 Stat. 23, January 30, 1942).

Wherefore, said United States Attorney prays that process of this Court be issued against said defendant, that he be dealt with according to law.

CHARLES H. CARR

United States Attorney

By CHARLES H. VEALE

Assistant United States At-  
torney

## VERIFICATION

State of California

County of Los Angeles

United States of America—ss.

George J. Ring, being first duly sworn, upon oath, deposes and says:

That he is an employee of the United States Government, to-wit: a Legal Investigator for the Office of Price Administration, an agency of the United States Government; that in the course of his duty as Legal Investigator for the Office of Price Administration he made an investigation of the matters set forth and mentioned in the above and foregoing Information against Hugh Wilton; that he has read the above and foregoing Information and knows the contents thereof and that the matters set forth therein are true of his own knowledge.

GEORGE J. RING

Subscribed and sworn to before me this 26 day of January, 1944.

[Seal]

EDMUND L. SMITH,

Clerk.

[Endorsed]: Filed, Jan. 28, 1944.

At a stated term, to-wit: The February Term, A. D. 1944, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Friday the 11th day of February in the year of our Lord one thousand nine hundred and forty-four.

Present: The Honorable J. F. T. O'Connor, District Judge.

[Title of Cause.]

No. 16.512-Crim.

This cause coming on for arraignment and plea of the defendant Hugh Wilton to the amended information on file herein; Ray H. Kinnison, Esq., Assistant U. S. Attorney, appearing for the Government; Paul Taylor, Esq., appearing for the defendant; John Q. Bybee, Court Reporter, being present and reporting the proceedings; the defendant, being present in court on his own recognizance, now states his true name to be as charged in the amended information, waives the reading of the amended information and enters plea of not guilty to each of the seven counts thereof.

It is ordered that this cause be, and it hereby is, set for trial for February 15, 1944, at 10 A. M. before Judge Jenney.

At a stated term, to-wit: The February Term, A. D. 1944, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Wednesday the 15th day of March in the year of our Lord one thousand nine hundred and forty-four.

Present: The Honorable Leon R. Yankwich, District Judge.

[Title of Cause.]

No. 16,512-Crim.

This cause coming on for further jury trial of defendant Hugh Wilton; E. A. Tolin, Assistant U. S. Attorney, appearing as counsel for the Government; Paul Taylor, Esq., appearing as counsel for the said defendant, who is present; and Myrtle Bennallack, Court Reporter, being present and reporting the testimony and the proceedings:

Hugh Wilton, defendant, resumes the stand and testifies further on direct examination and on cross-examination by Attorney Tolin. U. S. Exhibit 12 is marked for identification. The defendant testifies further on re-direct examination and on re-cross-examination by respective counsel. The defendant rests.

Georgia Burns, heretofore sworn, resumes the stand and testifies further for the Government in rebuttal.



Warren L. Shobert is called, sworn, and testifies for the Government.

Ray Fordham is called, sworn, and testifies for the Government and is cross-examined by Attorney Taylor and is questioned by the Court.

Robert L. Moore is called, sworn, and testifies for the Government and cross-examined by Attorney Taylor.

Testimony is closed. The Court reminds the jury of the admonition heretofore given and declares a recess for a few minutes. At 11:20 A. M. court reconvenes and all being present as before, including the jury and the defendant and counsel, Attorney Tolin argues for the Government. At 11:30 A. M. Attorney Taylor argues for the defendant; at 11:45 A. M. Attorney Tolin argues in rebuttal; and at 11:45½ A. M. the Court instructs the jury on the law of the case.

Attorney Taylor asks for clarification as to a certain instruction. The Court makes a statement. Bailiffs Turner and Fuller are sworn to care for the jury during its deliberation upon a verdict, and at 12:17 P. M. the jury retires to deliberate upon a verdict.

At 12:47 P. M. the jury return into court and all being present as before including the defendant with counsel, the jury is asked if they have agreed upon a verdict and the Foreman replies that they have and presents the verdict which is read, and it is ordered that the said verdict be filed and spread upon the minutes, the said verdict as read being as follows:

It is ordered that the cause be, and it hereby is, continued to March 20, 1944, at 10 A. M., for sentence.

[Title of District Court and Cause.]

### VERDICT

We, the Jury in the above-entitled case, find the defendant, Hugh Wilton, guilty, as charged in count one of the Information; guilty, as charged in count three of the Information; guilty, as charged in count four of the Information; guilty, as charged in count five of the Information; guilty, as charged in count six of the Information; guilty, as charged in count seven of the Information.

Dated: Los Angeles, California, March 15th, 1944.

H. K. BAGLEY

Foreman of the Jury.

[Endorsed]: Filed Mar. 15, 1944.

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At a stated term, to-wit: The February Term, A. D. 1944, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 3rd day of April in the year of our Lord one thousand nine hundred and forty-four.

Present: The Honorable Leon R. Yankwich, District Judge.

[Title of Cause.]

This cause coming on for sentence of the defendant Hugh Wilton on counts 1, 3, 4, 5, 6 and 7; E. A. Tolin, Esq., Assistant U. S. Attorney, appearing for the Government; Paul Taylor, Esq., appearing for the defendant; A. H. Bargion, Court Reporter, being present and reporting the proceedings; the defendant being present; Attorney Taylor makes a statement for the defendant.

The Court pronounces judgment against the defendant as follows:

District Court of the United States, Southern  
District of California, Central Division

No. 16512

Criminal information in 7 counts for violation  
Rent Regulation for Housing of U.S.C., Title  
(8 Fed. Reg. 7322)

UNITED STATES

v.

HUGH WILSON

### JUDGMENT AND COMMITMENT

On this 3rd day of April 1944, came the United States Attorney, and the defendant Hugh Wilton appearing in proper person, and with counsel, and,

The defendant having been convicted on verdict by the jury of the offenses charged in counts 1, 3, 4, 5, 6, 7, in the above-entitled cause, to wit: at Los

Angeles, California about September 28th, 1943 charged and received from tenants at 441 N. Figueroa Street, Los Angeles, Calif., more than the maximum rental fixed for said accomadations and premises, and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of ninety days on the first count of the information, and pay to the United States of America, a fine in the sum of \$500, on the third count of the information, and \$500 on the fourth count of the information, and \$500 on the fifth count of the information, and \$500 on the sixth count of the information, and \$500 on the seventh count of the information,

And for non-payment of the fine the defendant shall stand committed to an institution of the jail type till said fine is paid or he is discharged therefrom by due process of law.

It Is Further Ordered that the receipt of \$500 by the Clerk of this court shall be in satisfaction of the fines imposed, and the clerk shall mark the judgment satisfied upon said receipt; that the defendant have a stay of execution of judgment till 5 P.M. April 5th 1944, and that the second count of the information be and it is hereby dismissed.



It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

(Signed) LEON R. YANKWICH

United States District Judge.

[Endorsed]: Filed this 3rd day of April 1944.

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

Name and Address of Appellant: Hugh Wilton, 2225 South Harvard Blvd., Los Angeles, California.

Name and address of appellant's attorneys: Paul Taylor, 930 Bartlett Bldg., Los Angeles, Cal. Joseph P. Guerin, 229 N. Broadway, Los Angeles, Calif.

Offense: Violation (6 counts) of Rent Regulation for Housing issued pursuant to the Emergency Price Control Act of 1942.

Date of Judgment: April 3, 1944.

Defendant was sentenced to 90 days in jail (on Count I), fine of \$500.00 (on Count II), fine of \$500.00 (on Count III), fine of \$500.00 (on Count IV) and a fine of \$500.00 each on Counts V, VI and VII—and provided that the payment of \$500.00 would satisfy all fines on each and every count, save Count I. Defendant is upon his own recognizance, a stay of execution having been granted to April 22, 1944.

I, the above-named Appellant, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment above-mentioned, on the grounds set forth below.

HUGH WILSON

Appellant

Dated: April 7, 1944.

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[Title of District Court and Cause.]

GROUND OF APPEAL

I.

That the verdict was not supported by the evidence;

II.

That the verdict was contrary to law;

III.

That the verdict was contrary to the evidence;

IV.

That the verdict was contrary to the law and the evidence;

V.

Insufficiency of the evidence to sustain the verdict;

VI.

Plain errors of law occurring at the trial and not excepted to;

VII.

Plain errors of law occurring at the trial and not excepted to by which the defendant was denied a fair and impartial trial.

JOSEPH P. GUERIN &  
PAUL TAYLOR  
By PAUL TAYLOR  
Attorneys for Appellant.

Information: 7 counts for violation Emergency Price Control Act, Rent Division, L.A. Defense Rental Area, filed December 30, 1943;

Amended Information filed January 23, 1944.

Trial by Jury March 14-15, 1944.

Verdict of Guilty, March 15, 1944.

Judgment: 90 days confinement on Count I, \$500.00 fine on each of five counts, provided that payment of \$500.00 pays all fines.

Entered: April 3, 1944.

Notice of Appeal filed April 8, 1944.

Received copy of the within Notice of Appeal this 8th day of April, 1944.

CHARLES H. CARR (J.S.)

Attorney for U. S.

[Endorsed]: Filed Apr. 8, 1944.

[Title of District Court and Cause.]

ORDER

In the above entitled matter an appeal having been filed in the premises,

It Is Ordered that pending decision on appeal defendant remain upon his own recognizance, and that no bond be required in the premises, provided that the sum of Five Hundred Dollars (\$500.00) be deposited with the Clerk of this Court and by him held in registry pending the determination of the appeal.

Dated this 21 day of April, 1944.

J. F. T. O'CONNOR

Judge.

Approved as to form April 20, 1944.

ERNEST A. TOLIN,

Asst. United States Attorney

[Endorsed]: Filed Apr. 21, 1944.

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[Title of District Court and Cause.]

PRAECIPE

To Mr. Edmund L. Smith, Clerk of the District Court of the United States, in and for the Southern District of California, Central Division:

Please prepare and forward to the United States Circuit Court of Appeal, Ninth Circuit, the fol-



following exemplified papers in the above cause on appeal:

1. Amended Information.
2. Minute Order showing the bail set for the defendant and arraignment.
3. The plea of the defendant to the amended information.
4. Necessary Minute orders during trial of the cause.
5. Verdict.
6. Sentence of defendant.
7. Notice of Appeal.
8. Engrossed Bill of Exceptions.
9. Assignments of Error.
10. All the pleadings and proceedings had in said cause necessary to the perfecting of the appeal.

Dated: November 28, 1944.

PAUL TAYLOR

Attorney for Defendant.

[Endorsed]: Filed Nov. 29, 1944.

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[Title of District Court and Cause.]

### CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 21 inclusive contain full, true and correct copies of Minute Order Entered January 28, 1944; Amended Information; Minute

Order Entered February 11, 1944; Portion of Minute Order Entered March 15, 1944; Verdict; Portion of Minute Order Entered April 3, 1944; Judgment and Commitment; Notice of Appeal; Order and Praecipe which, together with Original Bill of Exceptions and Assignment of Errors and Original Exhibits, transmitted herewith, constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for comparing, correcting and certifying the foregoing record amount to \$7.15 which sum has been paid to me by Appellant.

Witness my hand and the seal of said District Court this 26th day of December, 1944.

[Seal]

EDMUND L. SMITH,

Clerk

By THEODORE HOCKE

Deputy Clerk.

At a Stated Term, to wit: The October Term 1943, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Monday the twentieth day of May in the year of our Lord one thousand nine hundred and forty-four.

Present:

Honorable Curtis D. Wilbur, Senior Circuit  
Judge Presiding,

Honorable Francis A. Garrecht, Circuit Judge,

Honorable William Healy, Circuit Judge.

No. 10740

HUGH WILTON,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

ORDER EXTENDING TIME TO SETTLE AND  
FILE BILL OF EXCEPTIONS, AND TO  
FILE ASSIGNMENTS OF ERROR

Upon consideration of the petition of appellant, for an extension of time within which the bill of exceptions in this cause may be settled and filed in above cause, Mr. Ernest A. Tolin, Assistant United States Attorney, counsel for appellee, offering no objection to such extension, and good cause therefor appearing,

It Is Ordered that the time within which the bill of exceptions in above cause may be settled and filed, and the assignments of error filed be, and hereby is extended to and including August 1, 1944.

I Hereby Certify that the foregoing is a full, true, and correct copy of an original Order made and entered in the within-entitled cause.

Attest my hand and the seal of the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 23rd day of May, 1944.

[Seal] PAUL P. O'BRIEN

Clerk, U. S. Circuit Court of Appeals for the Ninth Circuit.

[Endorsed]: Filed May 25, 1944.

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[Title of Circuit Court of Appeals and Cause.]

### STIPULATION

It Is Hereby Stipulated by and between counsel for the above parties, that the Appellant may have to and including the 15th day of September, 1944 within which to settle and file his Bill of Exceptions and his Assignment of Errors herein.

PAUL TAYLOR

Attorney for Appellant

CHARLES H. CARR,

United States Attorney,

By ERNEST A. TOLIN

Assistant U. S. Attorney

Attorneys for Appellee.



## ORDER

Upon reading the foregoing stipulation and good cause appearing therefor,

It Is Hereby Ordered that the time within which Appellant may settle and file his Bill of Exceptions and file his Assignment of Errors herein be, and the same is hereby extended to and including the 15th day of September, 1944.

Dated, July 26th, 1944.

ALBERT LEE STEPHENS

Judge.

WILLIAM DENMAN,

U. S. Circuit Judge.

State of California

County of Los Angeles—ss.

Kenneth W. Kearney, being duly sworn, deposes and says: that he was associated as counsel for appellant, for the purpose of prosecuting the appeal herein, on July 26, 1944; that the reporter's transcript was delivered to Paul Taylor, counsel of record for appellant, on July 21, 1944; that the time within which to settle and file the Bill of Exceptions and Assignment of Errors expires on August 1, 1944; that the Reporter's Transcript consists of 206 pages, exclusive of exhibits, and it would be a physical impossibility to prepare a Bill of Exceptions and Assignment of Errors by August 1, 1944; that affiant estimates that six weeks additional time would be necessary for that purpose.

KENNETH W. KEARNEY

Subscribed and sworn to, this 26th day of July,  
1944.

JAMES A. MILLER

Notary Public in and for said  
County and State

A True Copy.

Attest: July 31, 1944.

[Seal]                PAUL P. O'BRIEN,  
Clerk.

[Endorsed]: Filed July 28, 1944. Paul P.  
O'Brien, Clerk.

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At a Stated Term, to wit: The October Term 1943,  
of the United States Circuit Court of Appeals for  
the Ninth Circuit, held in the Court Room thereof,  
in the City and County of San Francisco, in the  
State of California, on Friday the fifteenth day of  
September in the year of our Lord one thousand  
nine hundred and forty-four.

Present:

Honorable Curtis D. Wilbur, Senior Circuit  
Judge, Presiding,

Honorable Francis A. Garrecht, Circuit Judge.

[Title of Cause.]

ORDER EXTENDING TIME TO SETTLE AND  
FILE BILL OF EXCEPTIONS AND TO  
FILE ASSIGNMENTS OF ERROR

Upon consideration of the telegraphic application  
of Mr. Kenneth W. Kearney, counsel for appellant,

and good cause therefor appearing, It Is Ordered that the time within which appellant may file and have settled his bill of exceptions, and file his assignments of error herein be, and hereby is extended to and including September 18, 1944.

I Hereby Certify that the foregoing is a full, true, and correct copy of an original Order made and entered in the within-entitled cause.

Attest my hand and the seal of the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 18th day of September, 1944.

[Seal]                      PAUL P. O'BRIEN,  
Clerk, U. S. Circuit Court of Appeals for the  
Ninth Circuit.

By FRANK H. SCHMID  
Deputy Clerk

[Endorsed]: Filed Sep. 20, 1944.

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At a Stated Term, to wit: The October Term, 1943, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Monday the eighteenth day of September in the year of our Lord one thousand nine hundred and forty-four.

Present:

Honorable Curtis D. Wilbur, Senior Circuit  
Judge, Presiding,

Honorable Francis A. Garrecht, Circuit Judge.

[Title of Cause.]

ORDER EXTENDING TIME TO FILE AND  
SETTLE BILL OF EXCEPTIONS, AND  
TO FILE ASSIGNMENTS OF ERROR

Upon consideration of the application of Mr. Paul Taylor, counsel for appellant, and stipulation of counsel for respective parties, and supporting affidavit of Mr. Kenneth W. Kearney, counsel for appellant, and good cause therefor appearing,

It Is Ordered that the time within which appellant may procure to be settled and filed his bill of exceptions, and to file his assignments of error be, and hereby is extended to and including October 16, 1944.

I Hereby Certify that the foregoing is a full, true, and correct copy of an original Order made and entered in the within-entitled cause.

Attest my hand and the seal of the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 18th day of September, 1944.

[Seal]

PAUL P. O'BRIEN,

Clerk, U. S. Circuit Court of Appeals for the  
Ninth Circuit.

By FRANK H. SCHMID

Deputy Clerk

[Endorsed]: Filed Sep. 20, 1944.



At a Stated Term, to wit: The October Term A.D. 1944, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City of Los Angeles, in the State of California, on Friday the thirteenth day of October in the year of our Lord one thousand nine hundred and forty-four.

Present:

Honorable Curtis D. Wilbur, Circuit Judge,

Honorable William Denman, Circuit Judge,

Honorable Albert Lee Stephens, Circuit Judge.

[Title of Cause.]

**ORDER EXTENDING TIME TO SETTLE AND  
FILE BILL OF EXCEPTIONS, AND TO  
FILE ASSIGNMENTS OF ERROR**

Upon consideration of the motion of counsel for of Exceptions and Assignments of Error, in the Kenneth W. Kearney, filed Oct. 11, 1944, and good cause therefor appearing,

It Is Ordered that the time to file proposed Bill of Exceptions and assignments of Error, in the above-entitled cause be, and hereby is extended to and including November 1, 1944; that the appellee herein may have to and including November 10, 1944, to file amendments to said proposed Bill of Exceptions, and that the Bill of Exceptions shall be settled on or before November 18, 1944.

I Hereby Certify that the foregoing is a full, true, and correct copy of an original Order made and entered in the within-entitled cause.

Attest my hand and the seal of the United States Circuit Court of Appeals for the Ninth Circuit, at the City of Los Angeles, in the State of California, this 13th day of October, 1944.

[Seal]                      PAUL P. O'BRIEN,  
Clerk, U. S. Circuit Court of Appeals for the Ninth  
Circuit.

[Endorsed]:    Filed Oct. 13, 1944.

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[Title of Circuit Court of Appeals and Cause.]

#### STIPULATION

It Is Hereby Stipulated by and between counsel for the above parties, that the Appellant may have to and including the 27th day of November, 1944, within which to recast and file the Bill of Exceptions and Assignment of Errors herein which were heretofore settled by the United States District Court on November 16, 1944.

PAUL TAYLOR

Attorney for Appellant.

CHARLES H. CARR,

United States Attorney,

By ERNEST A. TOLIN

Assistant U. S. Attorney.

Attorneys for Appellee.

ORDER

Upon reading the foregoing stipulation and good cause appearing therefor;

It Is Hereby Ordered that the time within which Appellant may recast and file his Bill of Exceptions and Assignment of Errors be, and the same is hereby, extended to and including the 27th day of November, 1944.

Dated: November 16, 1944.

ALBERT LEE STEPHENS

U. S. Circuit Judge.

FRANCIS A. GARRECHT

U. S. Circuit Judge.

State of California,

County of Los Angeles—ss.

Kenneth W. Kearney, being first duly sworn, deposes and says:

That he is associated with the attorney for Appellant herein; that heretofore the above entitled Court made its order extending the time of appellant to file his Bill of Exceptions until November 1, 1944, and providing that Appellee should have until November 10th within which to propose amendments, and that said Bill of Exceptions and Assignments of Errors should be settled on or before November 18, 1944; that on November 16, 1944, the United States District Court made its order settling said Bill of Exceptions; that it will be necessary to re-assemble said Bill of Exceptions because of the amendments allowed thereto, and to re-type certain portions thereof; affiant prays therefore

(Testimony of Mrs. Gladys Iliff.)

were received in our office and were filed by or on behalf of Mr. Wilton with the rent office as far as I know.

(The documents referred to marked Plaintiff's Exhibits 1 and 2 for identification, were received in evidence as government exhibits 1 and 2 and are hereto attached).



Government Exhibit No. 1

GENERAL INSTRUCTIONS

The landlord is required to register separately each rental dwelling unit, whether occupied or vacant. A dwelling unit is a room or a group of rooms for which a single rent is paid. Complete this Registration Statement in triplicate. (If not typewritten, be sure sufficient pressure is used so that both carbon copies are clear and distinct.) Remove carbons, and mail or bring the three copies to the Area Rent Office. Use extra sheets, in triplicate, for sections "D" & "E" if necessary.

UNITED STATES OF AMERICA  
OFFICE OF PRICE ADMINISTRATION  
REGISTRATION OF RENTAL DWELLINGS  
(TYPE OR PRINT PLAINLY - DO NOT FOLD)  
(Do Not Use This Form for Hotels and Rooming Houses)

Form Approved  
Budget Form No. 10-2  
Form DD 6-D  
AREA OFFICE  
COPY

IDENTIFICATION

1. 441 No. Figueroa  
Address of this rental dwelling unit
2. Apt. #16  
Apartment number or location
3. Number of Rooms in this dwelling unit
4. Total Number of dwelling units in this structure

SECTION A. MAILING ADDRESS OF LANDLORD

1. Name of Landlord James Vaxfield  
2. Name of Agent Hugh Wilton  
3. Address Mail to: ↓  
  
Name Hugh Wilton  
  
Address 2225 So. Harvard Blvd.  
  
City and State Los Angeles, California.

SECTION B. MAILING ADDRESS OF TENANT

Name of Tenant Joe Roman  
  
Address 441 No. Figueroa Apt. #16  
  
City and State Los Angeles, California.

SECTION C. MAXIMUM LEGAL RENT

Read carefully and fill in every item which applies to this dwelling unit.

1. Rent on March 1, 1942: \$ 16 per week ( ) per month ( )
2. Not rented on March 1, 1942 but rented at any time between January 1, 1942 and February 28, 1942.  
Date last rented during that two-month period: 1942  
Rent up to that date: \$ 16 per week ( ) per month ( )
3. Not rented at any time between January 1, 1942 and March 1, 1942, but rented after March 1, 1942.  
Check one box if applicable:  
( ) (a) Owner occupied or vacant between January 1, 1942 and March 1, 1942.  
( ) (b) Newly constructed without priority rating.  
( ) (c) Newly constructed with priority rating. (If checked, item 6 must also be filled in.)  
Date first rented after March 1, 1942: 194  
Rent on that date: \$ 16 per week ( ) per month ( )
4. Dwelling unit made available by a change which resulted in an increase or decrease in the number of dwelling units after March 1, 1942.  
Date first rented after such change: 194  
Rent on that date: \$ 16 per week ( ) per month ( )
5. Substantially changed after March 1, 1942, but before November 15, 1942. Check one box if applicable:  
( ) (a) From unfurnished to fully furnished.  
( ) (b) From fully furnished to unfurnished.  
( ) (c) By a major capital improvement AS DISTINGUISHED FROM ORDINARY REPAIR, REPLACEMENT AND MAINTENANCE.  
Date first rented after such change: 194  
Rent on that date: \$ 16 per week ( ) per month ( )
6. Dwelling unit newly constructed with a priority rating from the United States or any agency thereof.  
Rent approved by agency granting priority: \$ 16 per week ( ) per month ( )
7. THE MAXIMUM LEGAL RENT FOR THIS DWELLING UNIT IS:  
16 per week ( ) per month ( )

Enter Maximum Legal Rent in accordance with the following instructions:  
(a) If only one of the above items applies to this dwelling unit the Maximum Legal Rent is the rent entered for that item.  
(b) If more than one of the above items apply to this dwelling unit the Maximum Legal Rent is the rent reported for the most recent date except in the case of item 6.  
(c) If item 6 applies to this dwelling unit the Maximum Legal Rent is the lower of the rents entered in items 1, 3 or 5.  
\*Note: If any one of the items 3(b), 4 or 5 applies to this dwelling unit you must also fill in the information required in Section "E".  
The Administrator may at any time order a decrease in the Maximum Legal Rent determined under items 3(b), 4 or 5, or the grounds that the rent is higher than the rent generally prevailing for comparable housing accommodations on March 1, 1942.

Section E - See Note Section C. 7

If item 3(b), 4 or 5 of Section C was filled in, set forth in specific detail the type and cost of:

- (a) New construction
- (b) A change in the number of dwelling units
- (c) A change from unfurnished to fully furnished
- (d) A major capital improvement

SECTION D. EQUIPMENT AND SERVICES.

(Check the equipment and services included in the rent on March 1, 1942 or the most recent date you entered in Section C.)

1. EQUIPMENT	Yes	No
Furniture	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Running Water	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Hot Water	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Flush Toilet	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Bathroom	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Central Heating	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Heating Stove	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Mech. Refrigerator	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Electricity Installed	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Cooking Stove	<input checked="" type="checkbox"/>	<input type="checkbox"/>
If any equipment is shared, explain below:		

2. SERVICES	Yes	No
Garage	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Heat or Heating Fuel	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Cooking Fuel	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Cold Water	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Hot Water	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Lighting	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ice or Refrigeration	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Janitor Service	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Garbage Disposal	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Painting & Decorating	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Interior Repairs	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Exterior Repairs	<input checked="" type="checkbox"/>	<input type="checkbox"/>
List any other services:		

Are all equipment and services indicated above now included in the rent? Yes ☒ No ☐  
If "No" give date when to be furnished: DD-102-U

WARNING

The rent for this dwelling unit on and after March 1, 1942, shall not exceed the Maximum Legal Rent as determined under the provisions of the War Relocation Authority Act, as amended, and the regulations thereunder.



# GENERAL INSTRUCTIONS

The landlord is required to register separately each rental dwelling unit, whether occupied or vacant. A dwelling unit is a unit in a group of rooms for which a single rent is paid. Complete this Registration Statement in triplicate. (If not typewritten, be sure sufficient pressure is used so that both carbon copies are clear and distinct.) Indicate sections and mail or bring the three copies to the Area Office. Use extra sheets, in triplicate, for sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.

## SECTION A. MAILING ADDRESS OF LANDLORD

Name of Landlord: James Maxfield

Name of Agent: Hugh Wilton

Address Mailed to: Hugh Wilton

Name: Hugh Wilton

Address: 2225 So. Harvard Blvd.

City and State: Los Angeles, California.

## UNITED STATES OF AMERICA OFFICE OF PRICE ADMINISTRATION REGISTRATION OF RENTAL DWELLINGS (TYPE OR PRINT PLAINLY - DO NOT FOLD) (Do Not Use This Form for Hotels and Rooming Houses)

Form Approved  
Budget Bureau No. 65-228-02  
Form DD 6-D  
AREA OFFICE  
COPY

### IDENTIFICATION

1. 441 No. Figueroa  
Address of this rental dwelling unit

2. Apt. 710  
Apartment number or location

3. Number of Rooms in this dwelling unit: 2 1/2

4. Total Number of dwelling units in this structure: 2 1/2

## SECTION B. MAILING ADDRESS OF TENANT

Name of Tenant: Jose Arredas

Address: 441 N. Figueroa Apt. #10

City and State: Los Angeles, California.

### SECTION C. MAXIMUM LEGAL RENT

Read carefully and fill in every item which applies to this dwelling unit.

Rent on March 1, 1942: \$ 20.00 per week ( ) per month ( ) 3 tenants

Not rented on March 1, 1942 but rented at any time between January 1, 1942 and February 28, 1942.

Date last rented during that two-month period: 1942

Rent on that date: \$ 20.00 per week ( ) per month ( )

Not rented at any time between January 1, 1942 and March 1, 1942, but rented after March 1, 1942.

Check one box if applicable:

( ) (a) Owner occupied or vacant between January 1, 1942 and March 1, 1942.

( ) (b) Newly constructed without priority rating.

( ) (c) Newly constructed with priority rating. (If checked, item 6 must also be filled in.)

Date first rented after March 1, 1942: 1942

Rent on that date: \$ 20.00 per week ( ) per month ( )

Dwelling unit made available by a change which resulted in an increase or decrease in the number of dwelling units after March 1, 1942.

Date first rented after such change: 1942

Rent on that date: \$ 20.00 per week ( ) per month ( )

Substantially changed after March 1, 1942, but before November 1, 1942. Check applicable if applicable:

( ) (a) From unfurnished to fully furnished.

( ) (b) From fully furnished to unfurnished.

( ) (c) By a major capital improvement AS DISTINGUISHED FROM ORDINARY REPAIR.

REPLACEMENT AND MAINTENANCE.

Date first rented after such change: 1942

Rent on that date: \$ 20.00 per week ( ) per month ( )

Dwelling unit newly constructed with a priority rating from the United States or any agency thereof.

Rent approved by agency granting priority: \$ 20.00 per week ( ) per month ( )

THE MAXIMUM LEGAL RENT FOR THIS DWELLING UNIT IS:

20.00 per week ( ) per month ( ) 3 tenants

Enter Maximum Legal Rent in accordance with the following instructions:

(a) If only one of the above items applies to this dwelling unit the Maximum Legal Rent is the rent entered for that item.

(b) If more than one of the above items apply to this dwelling unit the Maximum Legal Rent is the rent entered for the most recent date except in the case of item 6.

(c) If item 6 applies to this dwelling unit the Maximum Legal Rent is the lower of the rents entered in items 1, 3 or 4.

Notes: If any one of the items 1(b), 4 or 5 applies to this dwelling unit you must also fill in the information required in Section "B".

The Administrator may at any time order a decrease in the Maximum Legal Rent determined under Items 1(a), 3 or 4, or the proceeds that the rent is higher than the rent generally prevailing for comparable housing accommodations on March 1, 1942.

### Section E - See Note Section C. 7 \*

If item 3(b), 4 or 5 of Section C was filled in, set forth in specific detail the type and cost of:

(a) New construction (d) A change from unfurnished to fully furnished

(b) A change in the number of dwelling units (e) A major capital improvement

The rent for this dwelling unit on or after November 1, 1942, can be no more than the maximum legal rent entered in Section C, item 7, regardless of the number of occupants, unless changed by an order of the Administrator.

### SECTION D. EQUIPMENT AND SERVICES.

(Check the equipment and services included in the rent on March 1, 1942 or the most recent date you entered in Section C.)

1. EQUIPMENT Yes No

Furniture 3 beds ( ) ( )

Running Water ( ) ( )

Hot Water ( ) ( )

Flush Toilet ( ) ( )

Bathroom ( ) ( )

Central Heating ( ) ( )

Heating Stove ( ) ( )

Mech. Refrigerator ( ) ( )

Electricity Installed ( ) ( )

Cooking Stove ( ) ( )

If any equipment is shared, explain below:

2. SERVICES Yes No

Garage ( ) ( )

Heat or Heating Fuel ( ) ( )

Cooking Fuel ( ) ( )

Cold Water ( ) ( )

Hot Water ( ) ( )

Lighting ( ) ( )

Ice or Refrigeration ( ) ( )

Janitor Service ( ) ( )

Garbage Disposal ( ) ( )

Painting & Decorating ( ) ( )

Interior Repairs ( ) ( )

Exterior Repairs ( ) ( )

List any other services: None

Are all equipment and services indicated above now included in the rent? Yes ( ) No ( )  
If "No" enter date the Form DD-REU.

### WARNING

The rent for this dwelling unit on or after November 1, 1942, can be no more than the maximum legal rent entered in Section C, item 7.

A fine imposed on this form, or on another, as evidenced by the Maximum Legal Rent, is a violation of the War Relocation Authority Act.





# GENERAL INSTRUCTIONS

This dwelling is required to register separately each rental unit, whether occupied or vacant. A dwelling unit is a room or group of rooms for which a single rent is paid. Complete the Registration Statement in triplicate (If not typewritten, the more sufficient pressure is used so that both carbon copies are clear and distinct.) Remove carbons and mail or bring the three copies to the Area Rent Office. Use extra sheets in triplicate, for sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.

## UNITED STATES OF AMERICA OFFICE OF PRICE ADMINISTRATION REGISTRATION OF RENTAL DWELLINGS (TYPE OR PRINT PLAINLY - DO NOT FOLD) (Do Not Use This Form for Hotels and Rooming Houses)

Form Approved  
Economic Warfare Administration  
Form DD 8-D  
AREA OFFICE  
COPY

### IDENTIFICATION

- 441 N. Figueroa  
Address of this rental dwelling unit
- Apt. #11  
Apartment number or location
- Number of Rooms in this dwelling unit
- Total Number of dwelling units in this structure

### SECTION A. MAILING ADDRESS OF LANDLORD

Name of Landlord James Maxfield  
Name of Agent Hugh Wilton  
Address Mail to  
Name Hugh Wilton  
Address 2225 So. Harvard Blvd.  
City and State Los Angeles, California.

### SECTION B. MAILING ADDRESS OF TENANT

Name of Tenant Mr. & Mrs. Carmen King  
Address 441 N. Figueroa Apt. #11  
City and State Los Angeles, California.

### SECTION C. MAXIMUM LEGAL RENT

Read carefully and fill in every item which applies to this dwelling unit.

- Rent on March 1, 1942: \$ 18.00 per week ( ) per month ( )
- Not rented on March 1, 1942 but rented at any time between January 1, 1942 and February 28, 1942.  
Date last rented during that two-month period \_\_\_\_\_, 1942.  
Rent on that date: \$ \_\_\_\_\_ per week ( ) per month ( )
- Not rented at any time between January 1, 1942 and March 1, 1942, but rented after March 1, 1942.  
Check one box if applicable:  
( ) (a) Owner occupied or vacant between January 1, 1942 and March 1, 1942.  
( ) (b) Newly constructed without priority rating.  
( ) (c) Newly constructed with priority rating. (If checked, item 6 must also be filled in.)  
Date first rented after March 1, 1942 \_\_\_\_\_, 1942.  
Rent on that date: \$ \_\_\_\_\_ per week ( ) per month ( )
- Dwelling unit made available by a change which resulted in an increase or decrease in the number of dwelling units after March 1, 1942.  
Date first rented after such change: \_\_\_\_\_, 1942.  
Rent on that date: \$ \_\_\_\_\_ per week ( ) per month ( )
- Substantially changed after March 1, 1942, but before November 1, 1942. Check one box if applicable:  
( ) (a) From unfurnished to fully furnished.  
( ) (b) From fully furnished to unfurnished.  
( ) (c) By a major capital improvement AS DISTINGUISHED FROM ORDINARY REPAIR, REPLACEMENT AND MAINTENANCE.  
Date first rented after such change \_\_\_\_\_, 1942.  
Rent on that date: \$ \_\_\_\_\_ per week ( ) per month ( )
- Dwelling unit newly constructed with a priority rating from the United States or any agency thereof.  
Rent approved by agency granting priority \$ \_\_\_\_\_ per week ( ) per month ( )

- THE MAXIMUM LEGAL RENT FOR THIS DWELLING UNIT IS:  
Enter Maximum Legal Rent in accordance with the following instructions:  
(a) If one of the above items apply to this dwelling unit the Maximum Legal Rent is the rent entered for that item.  
(b) If none of the above items apply to this dwelling unit the Maximum Legal Rent is the rent reported for that item.  
(c) If one of the above items apply to this dwelling unit the Maximum Legal Rent is the lower of the rents entered in items 1, 3 or 6.  
(d) If one of the above items apply to this dwelling unit the Maximum Legal Rent is the rent entered in item "E".  
The Administrator may at any time order a decrease in the Maximum Legal Rent determined under items (a), (b), (c) or (d), on the basis that the rent is higher than the rent generally prevailing for comparable housing accommodations on March 1, 1942.

### Section E - See Note Section C. 7 \*

If item (b), 4 or 5 of Section C was filled in, set forth in detail the type and cost of:

- New construction
- A change in the number of dwelling units
- A change from unfurnished to fully furnished
- A major capital improvement

### SECTION D. EQUIPMENT AND SERVICES.

(Check the equipment and services included in the rent on March 1, 1942 or the most recent date you entered in Section C.)

1. EQUIPMENT	Yes	No
Furniture	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Running Water	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Hot Water	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Flush Toilet	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Bathroom	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Central Heating	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Heating Stove	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Mech. Refrigerator	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Electricity Installed	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Cooking Stove	<input checked="" type="checkbox"/>	<input type="checkbox"/>

If any equipment is shared, explain below.

2. SERVICES	Yes	No
Garage	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Heat or Heating Fuel	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Cooking Fuel	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Cold Water	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Hot Water	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Lighting	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ice or Refrigeration	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Janitor Service	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Garbage Disposal	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Painting & Decorating	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Interior Repairs	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Exterior Repairs	<input checked="" type="checkbox"/>	<input type="checkbox"/>
List any other services:		

Are all equipment and services indicated above included in the rent? Yes (X) No ( )  
If "No" you must also file Form DD-102-U

### WARNING

The rent for this dwelling unit on and after November 1, 1942, may be no more than the Maximum Legal Rent entered in Section C, item 7.

A false statement on this form or an omission or concealment of material information may subject you to a \$5,000 fine or imprisonment for any term not exceeding one year, or both.

I HEREBY REPRESENT AND WARRANT that the foregoing is true and correct.

James Maxfield  
Landlord



1.2  
3/14  
3/4/14  
2  
2  
Jhon

Government's Exhibit No 2

GENERAL INSTRUCTIONS

The landlord is required to register separately each rental dwelling unit, whether occupied or vacant. A dwelling unit is a room or a group of rooms for which a single rent is paid. Complete this Registration Statement in triplicate. (If not typewritten, be sure sufficient pressure is used so that both carbon copies are clear and distinct.) Remove carbons, and mail or bring the three copies to the Area Rent Office. Use extra sheets, in triplicate, for sections "D" & "E" if necessary.

UNITED STATES OF AMERICA  
OFFICE OF PRICE ADMINISTRATION  
REGISTRATION OF RENTAL DWELLINGS  
(TYPE OR PRINT PLAINLY - DO NOT FOLD)  
(Do Not Use This Form for Hotels and Rooming Houses)

Form Approved  
Budget Form No. 28-2  
Form DD 6-1  
AREA OFFICE  
COPY

IDENTIFICATION

1. 435 No. Figueroa  
Address of the rental dwelling unit
2. Apt. #4  
Apartment number or location
3. Number of Rooms in this dwelling unit
4. Total Number of dwelling units in this structure

SECTION A. MAILING ADDRESS OF LANDLORD

1. Name of Landlord James Maxfield  
2. Name of Agent Hugh Wilton  
3. Address Mail to: Hugh Wilton  
Name Hugh Wilton  
Address 2225 So. Harvard Blvd.  
City and State Los Angeles, California.

SECTION B. MAILING ADDRESS OF TENANT

Name of Tenant Fred Flores  
Address 435 No. Figueroa, Apt. #4  
City and State Los Angeles, California.

SECTION C. MAXIMUM LEGAL RENT

Read carefully and fill in every item which applies to this dwelling unit.

1. Rent on March 1, 1942: \$ 17.50 per week ( ) per month ( ) 3 tenants
2. Not rented on March 1, 1942 but rented at any time between January 1, 1942 and February 28, 1942.  
Date last rented during that two-month period: \_\_\_\_\_ 1942  
Rent on that date: \$ \_\_\_\_\_ per week ( ) per month ( )
3. Not rented at any time between January 1, 1942 and March 1, 1942, but rented after March 1, 1942.  
Check one box if applicable:  
( ) (a) Owner occupied or vacant between January 1, 1942 and March 1, 1942.  
( ) (b) Newly constructed without priority rating.  
( ) (c) Newly constructed with priority rating. (If checked, item 6 must also be filled in.)  
Date first rented after March 1, 1942: \_\_\_\_\_ 1942  
Rent on that date: \$ \_\_\_\_\_ per week ( ) per month ( )
4. Dwelling unit made available by a change which resulted in an increase or decrease in the number of dwelling units after March 1, 1942.  
Date first rented after such change: \_\_\_\_\_ 1942  
Rent on that date: \$ \_\_\_\_\_ per week ( ) per month ( )
5. Substantially changed after March 1, 1942 but before November 1, 1942. Check one box if applicable:  
( ) (a) From unfurnished to fully furnished.  
( ) (b) From fully furnished to unfurnished.  
( ) (c) By a major capital improvement AS DISTINGUISHED FROM ORDINARY REPAIR, REPLACEMENT AND MAINTENANCE.  
Date first rented after such change: \_\_\_\_\_ 1942  
Rent on that date: \$ \_\_\_\_\_ per week ( ) per month ( )
6. Dwelling unit newly constructed with a priority rating from the United States or any agency thereof.  
Rent approved by agency granting priority: \$ \_\_\_\_\_ per week ( ) per month ( )

7. THE MAXIMUM LEGAL RENT FOR THIS DWELLING UNIT IS:

Enter Maximum Legal Rent in accordance with the following instructions:  
(a) If only one of the above items applies to this dwelling unit the Maximum Legal Rent is the rent entered for that item.  
(b) If more than one of the above items apply to this dwelling unit the Maximum Legal Rent is the rent reported for the most recent date except in the case of Item 6.  
(c) If Item 6 applies to this dwelling unit the Maximum Legal Rent is the lower of the rents entered in Items 1, 3 or 6.  
\*Note: If any one of the items 3(b), 4 or 5 applies to this dwelling unit you must also fill in the information required in Section "E".  
The Administrator may at any time order a decrease in the Maximum Legal Rent determined under Items 3(b), 4, or 5, or on the grounds that the rent is higher than the rent generally prevailing for comparable housing accommodations on March 1, 1942.

Section E - See Note Section C, 7 \*

If item 3(b), 4 or 5 of Section C was filled in, set forth in specific detail the type and cost of:

- (a) New construction
- (b) A change in the number of dwelling units
- (c) A change from unfurnished to fully furnished
- (d) A major capital improvement

SECTION D. EQUIPMENT AND SERVICES.

(Check the equipment and services included in the rent on March 1, 1942 or the most recent date you entered in Section C.)

- | 1. EQUIPMENT          | Yes                                 | No                                  |
|-----------------------|-------------------------------------|-------------------------------------|
| Furniture             | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| Running Water         | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| Hot Water             | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| Flush Toilet          | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| Bathroom              | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| Central Heating       | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| Heating Stove         | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| Mech. Refrigerator    | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| Electricity Installed | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| Cooking Stove         | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
- If any equipment is shared, explain below:

2. SERVICES

- |                       | Yes                                 | No                                  |
|-----------------------|-------------------------------------|-------------------------------------|
| Garage                | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| Heat or Heating Fuel  | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| Cooking Fuel          | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| Cold Water            | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| Hot Water             | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| Ice or Refrigeration  | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| Janitor Service       | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| Garbage Disposal      | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| Painting & Decorating | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| Interior Repairs      | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| Exterior Repairs      | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| Any other services    | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |

Are all equipment and services indicated above now included in the rent? Yes ( ) No ( )  
If "No" you must also file Form DD-102-U

WARNING

The rent for this dwelling unit on or after November 1, 1942, shall not be more than the Maximum Legal Rent entered in Section C, Item 7.

A false statement on this form, or an omission or concealment of material information, may constitute a violation of the Maximum Rent Regulations and may subject you to civil or criminal penalties for perjury.

The rent for this dwelling unit on or after November 1, 1942, shall not be more than the maximum legal rent entered in Section C, Item 7, regardless of the number of occupants, unless changed by an order of the Area Rent Director.





# GENERAL INSTRUCTIONS

The landlord is required to register separately each rental dwelling unit, whether occupied or vacant. A dwelling unit is a room or a group of rooms for which a single rent is paid. Complete this Registration Statement in triplicate. If not typewritten, be sure sufficient pressure is used so that both carbon copies are clear and distinct. Stamp carbons and mail or bring the three copies to the Area Rent Office. Use extra sheets, in triplicate, for sections D & E. Do not attach.

## UNITED STATES OF AMERICA OFFICE OF PRICE ADMINISTRATION REGISTRATION OF RENTAL DWELLINGS (TYPE OR PRINT PLAINLY - DO NOT FOLD) Do Not Use This Form for Hotels and Rooming Houses

Form DD-8-D  
AREA OFFICE  
COPY

### IDENTIFICATION

- 1 435 No. Figueroa  
Address of this rental dwelling unit
- 2 Apt. #3  
Apartment number or location
- 3 Number of Rooms in this dwelling unit
- 4 Total Number of dwelling units in this structure

### SECTION A. MAILING ADDRESS OF LANDLORD

1. Name of Landlord James Maxfield  
2. Name of Agent Hugh Wilton  
3. Address Mailed to  
Name Hugh Wilton  
Address 2225 So. Harvard Blvd.  
City and State Los Angeles, California.

### SECTION B. MAILING ADDRESS OF TENANT

Name of Tenant Pete Mandalope  
Address 435 No. Figueroa Apt. #3  
City and State Los Angeles, California.

### SECTION C. MAXIMUM LEGAL RENT

Read carefully and fill in every item which applies to this dwelling unit

- 1 Rent on March 1, 1942, \$ 15.00 per week ( ) per month X one tenant
- 2 Not rented on March 1, 1942 but rented at any time between January 1, 1942 and February 28, 1942.  
Date last rented during that two-month period: \_\_\_\_\_ 1942  
Rent on that date: \$ \_\_\_\_\_ per week ( ) per month ( )
- 3 Not rented at any time between January 1, 1942 and March 1, 1942, but rented after March 1, 1942.  
Check one box if applicable:  
( ) (a) Owner occupied or vacant between January 1, 1942 and March 1, 1942  
( ) (b) Newly constructed without priority rating.  
( ) (c) Newly constructed with prioritizing. (If checked, item 6 must also be filled in.)  
Date first rented after March 1, 1942: \_\_\_\_\_ 1942  
Rent on that date: \$ \_\_\_\_\_ per week ( ) per month ( )
- 4 Dwelling unit made available by a change which resulted in an increase or decrease in the number of dwelling units after March 1, 1942.  
Date first rented after such change: \_\_\_\_\_ 1942  
Rent on that date: \$ \_\_\_\_\_ per week ( ) per month ( )
- 5 Substantially changed after March 1, 1942, but before November 1, 1942. Check one box if applicable:  
( ) (a) From unfurnished to fully furnished.  
( ) (b) From fully furnished to unfurnished.  
( ) (c) By a major capital improvement AS DISTINGUISHED FROM ORDINARY REPAIR, REPLACEMENT AND MAINTENANCE.  
Date first rented after such change: \_\_\_\_\_ 1942  
Rent on that date: \$ \_\_\_\_\_ per week ( ) per month ( )
- 6 Dwelling unit newly constructed with a priority rating from the United States War Relocation Authority thereof.  
Rent approved by agency granting priority: \$ \_\_\_\_\_ per week ( ) per month ( )
7. THE MAXIMUM LEGAL RENT FOR THIS DWELLING UNIT IS:  
15.00 per week ( ) per month X one tenant

Enter Maximum Legal Rent in accordance with the following instructions:  
(a) If only one of the above items applies to this dwelling unit the Maximum Legal Rent is the rent entered for that item.  
(b) If more than one of the above items apply to this dwelling unit the Maximum Legal Rent is the rent reported for the most recent date except in the case of item 6.  
(c) If item 6 applies to this dwelling unit the Maximum Legal Rent is the lower of the rents entered in items 1, 3 or 6.  
Warning: If any one of the items 3(b), 4 or 5 applies to this dwelling unit you must also fill in the information required in Section "E".  
The Administrator may at any time order a decrease in the Maximum Legal Rent determined under Items 3(b), 4 or 5, on the grounds that the rent is higher than the rent generally prevailing for comparable housing accommodations on March 1, 1942.

### Section E - See Note Section C. 7

If item 3(b), 4 or 5 of Section C was filled in, set forth in specific detail the type and cost of:

- (a) New construction
- (b) A change in the number of dwelling units
- (c) A change from unfurnished to fully furnished
- (d) A major capital improvement

### SECTION D. EQUIPMENT AND SERVICES.

(Check the equipment and services included in the rent on March 1, 1942 or the most recent date you entered in Section C.)

- | I. EQUIPMENT          | Yes              | No |
|-----------------------|------------------|----|
| Furniture             | <u>Partially</u> |    |
| Running Water         | <u>(X)</u>       |    |
| Hot Water             | <u>(X)</u>       |    |
| Flush Toilet          | <u>(X)</u>       |    |
| Bathroom              | <u>(X)</u>       |    |
| Central Heating       | <u>(X)</u>       |    |
| Heating Stove         | <u>(X)</u>       |    |
| Mech. Refrigerator    | <u>(X)</u>       |    |
| Electricity Installed | <u>(X)</u>       |    |
| Cooking Stove         | <u>(X)</u>       |    |
- If any equipment is shared, explain below:

- | 2. SERVICES           | Yes        | No |
|-----------------------|------------|----|
| Garage                | <u>(X)</u> |    |
| Heat or Heating Fuel  | <u>(X)</u> |    |
| Cooking Fuel          | <u>(X)</u> |    |
| Cold Water            | <u>(X)</u> |    |
| Hot Water             | <u>(X)</u> |    |
| Lighting              | <u>(X)</u> |    |
| Ice or Refrigeration  | <u>(X)</u> |    |
| Janitor Service       | <u>(X)</u> |    |
| Garbage Disposal      | <u>(X)</u> |    |
| Painting & Decorating | <u>(X)</u> |    |
| Interior Repairs      | <u>(X)</u> |    |
| Exterior Repairs      | <u>(X)</u> |    |
- List any other services:

Are all equipment and services indicated above included in the rent? Yes (X) No ( )  
If "No" you must fill in the Form DD-162-U.

### WARNING

Penalty for falsification of this form and plan Maximum Civil Penalties for each violation.

A false statement on this form, or its omission or concealment of any information required by this form, may constitute a violation of the Espionage Laws and may subject you to criminal penalties.

The rent for this dwelling unit on or after November 1, 1942, can be no more than the maximum legal rent entered in Section C, Item 7, regardless of the number of occupants unless shown by an order of the War Relocation Authority.



# GENERAL INSTRUCTIONS

The landlord is required to register separately each rental dwelling unit whether occupied or vacant. A dwelling unit is a room or a group of rooms for which a single rent is paid. Complete this Registration Statement in triplicate. (If not typewritten, be sure sufficient pressure is used so that both carbon copies are clear and distinct.) Remove carbons and mail or bring the three copies to the Area Rent Office. Use extra sheets, in triplicate, for sections "D" & "E" if necessary.

## UNITED STATES OF AMERICA OFFICE OF PRICE ADMINISTRATION REGISTRATION OF RENTAL DWELLINGS (TYPE OR PRINT PLAINLY - DO NOT FOLD) (Do Not Use This Form for Hotels and Rooming Houses)

Form Approved  
Budget Bureau No. 65-628-01  
Form DD 6-D  
AREA OFFICE  
COPY

### IDENTIFICATION

1. 435 No. Figueroa  
Address of this rental dwelling unit
2. Apt. #9  
Apartment number or location
3. Number of Rooms in this dwelling unit 2
4. Total Number of dwelling units in this structure 8

### SECTION A. MAILING ADDRESS OF LANDLORD

1. Name of Landlord James Maxfield
2. Name of Agent Hugh Wilton
3. Address Mail to

Name Hugh Wilton

Address 2225 So. Harvard Blvd.

City and State Los Angeles, California.

### SECTION B. MAILING ADDRESS OF TENANT

Name of Tenant Mrs. Marie Rosaly Chang

Address 435 No. Figueroa Apt. #9

City and State Los Angeles, California.

### SECTION C. MAXIMUM LEGAL RENT

Read carefully and fill in every item which applies to this dwelling unit.

1. Rent on March 1, 1942 \$ 18.00 per week ( ) per month ( )
2. Not rented on March 1, 1942 but rented at any time between January 1, 1942 and February 28, 1942.  
Date last rented during that two-month period: \_\_\_\_\_ 1942.  
Rent on that date: \$ \_\_\_\_\_ per week ( ) per month ( )
3. Not rented at any time between January 1, 1942 and March 1, 1942, but rented after March 1, 1942.  
Check one box if applicable:  
( ) (a) Owner occupied or vacant between January 1, 1942 and March 1, 1942.  
( ) (b) Newly constructed without priority rating.  
( ) (c) Newly constructed with priority rating. (If checked, item 6 must also be filled in.)

Date first rented after March 1, 1942 \_\_\_\_\_ 1942

Rent on that date: \$ \_\_\_\_\_ per week ( ) per month ( )

4. Dwelling unit made available by a change which resulted in an increase or decrease in the number of dwelling units after March 1, 1942.

Date first rented after such change: \_\_\_\_\_ 1942

Rent on that date: \$ \_\_\_\_\_ per week ( ) per month ( )

5. Substantially changed after March 1, 1942, but before November 1, 1942. Check one box if applicable:

( ) (a) From unfurnished to fully furnished

( ) (b) From fully furnished to unfurnished

( ) (c) By a major capital improvement

REPLACEMENT AND MAINTENANCE

Date first rented after such change: \_\_\_\_\_ 1942

Rent on that date: \$ \_\_\_\_\_ per week ( ) per month ( )

6. Dwelling unit newly constructed with a priority rating from the United States war agency thereof.

Rent approved by agency granting priority: \$ \_\_\_\_\_ per week ( ) per month ( )

7. THE MAXIMUM LEGAL RENT FOR THIS DWELLING UNIT IS:

\$ 18.00 per week ( ) per month ( )

Enter Maximum Legal Rent in accordance with the following instructions:

(a) If only one of the above items applies to this dwelling unit the Maximum Legal Rent is the rent entered on this form.

(b) If more than one of the above items apply to this dwelling unit the Maximum Legal Rent is the rent reported on the most recent date except in the case of item 6.

(c) If item 6 applies to this dwelling unit the Maximum Legal Rent is the lower of the rents reported in item 6.

Water: If any one of the items 3(b) & 5 applies to this dwelling unit you must also fill in the information required in Section "B".

The Administrator may at any time order a decrease in the Maximum Legal Rent determined under items 1(a), 1(b), 4, or 5, or the grounds for the rent or higher than the rent generally prevailing for comparable housing in the community as of March 1, 1942.

### Section E - See Note Section C. 7

If item 3(b), 4 or 5 of Section C was filled in, set forth in specific detail the type and cost of:

(a) New construction

(c) A change from unfurnished to fully furnished

(b) A change in the number of dwelling units

(d) A major capital improvement

### SECTION D. EQUIPMENT AND SERVICES

(Check the equipment and services included in the rent on March 1, 1942 or the most recent date you entered in Section C.)

#### 1. EQUIPMENT

- |                         | Yes                                 | No                                  |
|-------------------------|-------------------------------------|-------------------------------------|
| Furniture <u>3 beds</u> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| Running Water           | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| Hot Water               | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| Flush Toilet            | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| Bathroom                | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| Central Heating         | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| Heating Stove           | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| Mech. Refrigerator      | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| Electricity Installed   | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| Cooking Stove           | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |

If any equipment is shared, explain below:

#### 2. SERVICES

- |                       | Yes                                 | No                                  |
|-----------------------|-------------------------------------|-------------------------------------|
| Garage                | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| Heat or Heating Fuel  | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| Cooking Fuel          | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| Cold Water            | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| Hot Water             | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| Light                 | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| Ice or Refrigeration  | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| Janitor Service       | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| Garbage Disposal      | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| Painting & Decorating | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| Interior Repairs      | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| Exterior Repairs      | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |

List any other services:

Any all equipment and services indicated above now included in the rent? Yes ☒ No ☐  
If "No" you must also file Form DD-102-U

### WARNING

The rent for this dwelling unit as set after March 1, 1942 may be no more than the Maximum Legal Rent entered in Section C, item 7.

A false statement on this form, or its omission or intentional creation of the Maximum Rent Regulation may subject you to criminal penalties or imprisonment for one year.

I declare that the information furnished on this form is true and correct to the best of my knowledge and belief.

Signature of Landlord or Agent: \_\_\_\_\_

Date: \_\_\_\_\_





(Testimony of Mrs. Gladys Iliff.)

Cross Examination

The insignia evidently made by a rubber stamp "Must be registered again" was not on exhibits 1 and 2 when I first saw them. They were put in the area file with the stamp on. When Mr. Wilton declared to us that he had changed his apartment house into rooms, that was attached to the new one. I have nothing to do with that particular part of it. Those are always drawn from the area files when a landlord comes in to re-register, saying that he has changed. They are then put together for investigation. I did not put it there and do not know the date. Unless they have a date on them, they were filed before January 15, 1943. The rubber stamps were put on at some other time. In the course of the office procedure many people handle the files. I do not know who put them on there. There is nothing in my mind to identify these other than what appears on the face. I have seen other registrations which were on the D H Form, which is the one we use for hotels and rooming houses. I do not know the exact date. It might have been October or November of 1943 that Mr. Wilton came in and requested that his forms be given to him. At some time and place there was a re-registration of some sort. It was brought before me for approval and it was not granted. I did not approve giving the re-registration to Mr. Wilton because we have to have an investigation before we can do that. The power or province to approve or disapprove is through proper investi-

(Testimony of Mrs. Gladys Iliff.)

is fundamentally correct in our minds. Then these forms are stamped with the registered stamp and then they are torn apart. This part remains in the area file. The landlord's and the tenant's copies are mailed through the mail to the landlord, the respective landlord and the tenant. In this case of the registrations of the apartments as apartments, these were sent out. I refer to Exhibits 1 and 2. Exhibits 1 and 2 are the registration of those properties as apartment house properties. Exhibit No. 4 for identification, is the registration for rooming houses and it is the one that I referred to that was not returned to (him) Mr. Wilton. His copy was not O. K.'d. As far as I know it was filed with the area rent office by Mr. Wilton. It comes in our office with the signature, we do not accept it, of course, if it is not signed. It was not approved. He was not ever given permission to charge the rental shown on this exhibit No. 4.

(The document referred to as Plaintiff's Exhibit No. 4 was received in evidence as Government Exhibit No. 4 and is hereto attached).

Government Exhibit No 4

UNITED STATES OF AMERICA  
OFFICE OF PRICE ADMINISTRATION

FORM APPROVED  
RENTS CONTROL ACT, 1942  
Form OPA-D  
AREA OFFICE COPY

Registration of Hotels, Rooming Houses, Boarding Houses, Dormitories, Auto  
Camps, Residence Clubs, Tourist Homes and Cabins, and Trailer Camps

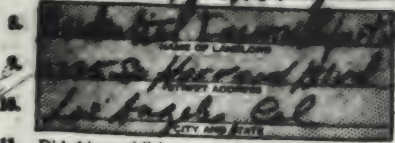
(TYPE OR PRINT PLAINLY - DO NOT FOLD)

Please Read the Instructions Carefully Before Filing  
On This Registration Statement

SECTION A - IDENTIFICATION

1. This establishment is a:  
Hotel ☐ Trailer Camp ☐  
Boarding House ☐ Residence Club ☐  
Rooming House ☐ Tourist Home ☐  
Dormitory ☐ Tourist Cabin ☐  
Auto Camp ☐

6. Name of Establishment 441 N. Figueroa St  
7. Street Address 441 N. Figueroa St



9. Total Number of Rooms for Rent: 14  
10. Total Number of Occupants 30  
When Fully Rented: 30

11. Did this establishment rent rooms or offer them  
for rent on March 1, 1942? Yes ☐ No ☒

12. Total Number of Bathrooms: 8

13. Was the eating of meals required as a condition of  
renting any room in this establishment on June 15,  
1942? Yes ☐ No ☒

If the answer is "no", on what date did this  
establishment first offer rooms for rent after  
March 1, 1942?  
Feb 1st 1943

SECTION B - MAXIMUM LEGAL RENTS FOR ROOMS RENTED OR OFFERED FOR RENT

Note: If the room was actually rented at the rent reported and not merely offered for rent,  
indicate by placing an "X" in the box after the amount.

If there was only a single rate covering both room and meals, apportion the total charge be-  
tween a charge for meals and a charge for room rent. The apportionment must be fair and reason-  
able. ENTER ONLY THE CHARGE FOR ROOM RENT.

1. Are any of the rents entered below apportioned from a single charge for room and meals? Yes ☐ No ☒  
2. Schedule of maximum legal rents.

Room Type No. of Locations	DAILY RATE			WEEKLY RATE			MONTHLY RATE		
	one person	two persons	three persons	one person	two persons	three persons	one person	two persons	three persons
21	2.00	2.50	3.00	9.00	10.50	11.00	36	40	44
22	1.50	2.00	2.50	5.50	6.00	6.50	20	24	28
23	1.00	2.00	2.50	4.00	5.00	6.00	18	24	28
24	1.00	2.00	2.50	5.00	6.00	7.00	20	24	28
25	1.50	2.00	2.50	6.00	6.50	7.00	20	24	28
26	1.00	2.00	2.50	5.00	6.00	7.00	20	24	28
27	1.00	2.00	2.50	5.00	6.00	7.00	20	24	28
28	1.00	2.00	2.50	5.00	6.00	7.00	20	24	28
29	1.00	2.00	2.50	5.00	6.00	7.00	20	24	28

If additional space is required, continue on the back of this sheet.

WARNING

The rates reported in Section B are the Maximum Legal Rents which may be charged. Any charge in  
excess of these rates, unless previously authorized in accordance with the Maximum Rent Regulation, may sub-  
ject you to a \$5,000 fine or imprisonment for one year, or both, and to damages payable to the tenant amounting  
to three times the overcharge, plus attorney's fees. A false statement on this form may subject you to a \$5,000  
fine or imprisonment for one year, or both.

I HEREBY REPRESENT that all statements and entries given herein or attached hereto are true and  
correct  
Handwritten signature









(Testimony of Mrs. Gladys Iliff.)

Government's Exhibit No. 5 for identification, is another registration filed by the defendant Hugh Wilton with the area rent office. It was never approved. It apparently concerned the same properties that are referred to on Exhibits 1 and 2. Mr. Wilton was (not ever) never given authority to charge the rental shown thereon. The document was never filed because there is no registered stamp upon it. It was presented for filing but never has been filed.

(The document referred to as Government's Exhibit No. 5 for identification was received in evidence as Government's Exhibit No. 5 and is attached hereto.)





3/14/44  
3/14/44

*Exhibit No 5*  
**UNITED STATES OF AMERICA**  
**OFFICE OF PRICE ADMINISTRATION**

FORM APPROVED  
OFFICE OF PRICE ADMINISTRATION  
Form 100-20  
AREA OFFICE COPY

Registration of Hotels, Rooming Houses, Boarding Houses, Dormitories, Auto  
Camps, Residence Clubs, Tourist Homes and Cabins, and Trailer Camps

**TYPE OR PRINT PLAINLY - DO NOT FOLD**

Please Read the Instructions Carefully Before Filling  
Out This Registration Statement

**SECTION A - IDENTIFICATION**

1. The establishment is a:  
Hotel ☐ Tourist Home ☐  
Boarding House ☒ Tourist Home ☐  
Dormitory ☐ Tourist Home ☐  
Auto Camp ☐ Tourist Home ☐  
Residence Club ☐ Tourist Home ☐  
Trailer Camp ☐ Tourist Home ☐
2. Total Number of Rooms: 14
3. Total Number of Bathrooms: 32
4. Total Number of Bedrooms: 8
5. Whether this is a new establishment or a continuation of an existing one: Yes ☐ No ☒

6. Name of Establishment: 125 S. Harvard
7. Street Address: Los Angeles, Cal
8. Residential Income Population
9. 125 S. Harvard 3rd
10. Los Angeles, Cal
11. Did this establishment ever offer them for rent on March 1, 1943?  
Yes ☐ No ☒  
If the answer is "No," on what date did this establishment last offer rooms for rent after March 1, 1943?  
Feb 1<sup>st</sup> 1943

**SECTION B - MAXIMUM LEGAL RENTS FOR ROOMS RENTED OR OFFERED FOR RENT**

Note: If the room was actually rented at the rent reported and not merely offered for rent, indicate by placing an "X" in the box after the amount.

If there was only a single rate covering both room and meals, apportion the total charge between a charge for meals and a charge for room rent. The apportionment must be fair and reasonable. ENTER ONLY THE CHARGE FOR ROOM RENT.

1. Are any of the rents reported below apportioned from a single charge for room and meals? Yes ☐ No ☒
2. Number of persons in each room:

Room Number and Location	DAILY RATE			WEEKLY RATE			MONTHLY RATE		
	one person	two persons	three persons	one person	two persons	three persons	one person	two persons	three persons
1	1.50	2.00	2.50	6	7	8	24	26	28
3	1.00	1.50	2.00	5	6	7	20	24	28
4	1.00	1.50	2.00	5	6	7	20	24	28
5	1.50	2.00	2.50	4	5	6	16	20	24
6	1.50	2.00	2.50	4	5	6	16	20	24
8	1.50	2.00	2.50	4	5	6	16	20	24
9	1.50	2.00	2.50	4	5	6	16	20	24

If additional space is required, continue on the back of this sheet.

**WARNING**

The rates reported in Section B are the Maximum Legal Rents which may be charged. Any charge in excess of these rates, unless previously authorized in accordance with the Maximum Rent Regulation, may subject you to a \$5,000 fine or imprisonment for one year, or both, and to damages payable to the tenant amounting to three times the overcharge, plus attorney's fees. A false statement on this form may subject you to a \$5,000 fine or imprisonment for one year, or both.

I HEREBY REPRESENT that all statements and entries given herein or attached hereto are true and correct.  
Sept. 28 1943  
Randy Lee Herring, Apartment  
125 S. Harvard 3rd









(Testimony of Mrs. Gladys Iliff.)

### Recross Examination

We don't file documents until they are approved. They must be inspected by inspectors and approved by the legal department before they are put into the file. It sometimes takes several weeks, depending on how long it takes to make the inspection. The landlord's copy remains with the other copy until it is approved. It may be there a month or two depending on how fast we can get it through. It might take several weeks for the investigation to be made and then several weeks for the legal department to pass on it. In the meantime nothing is released to the applicant, and not until that release does he have authority to charge the rents for which he has asked.

### Redirect Examination

On Exhibits No. 4 and 5 bearing the date September 28, is stamped the date of October 1. Those were referred for inspection on the day that Mr. Wilton came in and requested his landlord's copy. We told him we would see in the morning if they were O. K. and if they were O. K. we would give them to him. He came in the next morning and was refused the registration. This particular one did not take months.

### Recross Examination

He came in the next morning and he was refused. He was told they were not in order. He was registered correctly evidently in the first place. I did not talk with him at all. I did not hear the

(Testimony of Mrs. Gladys Iliff.)

conversation. Mrs. Burns did the talking that I am relating. She made those remarks at my direction and under my supervision. I told her to make them.

---

MADGE BENTLEY,

a witness for plaintiff, being sworn, testified as follows:

Direct Examination

I was manager of the apartment house located at 441 North Figueroa Street in Los Angeles and 435 North Figueroa Street. They were connected. I became manager about 1931 and ceased to be manager December 1, 1942. I was resident manager and I had the renting of the apartments, collection of rents and the attention to the upkeep in a certain way, of course, and I was under the jurisdiction of another manager. However, that was my duty, to be on the job at all times and take care of the property and the people. I am familiar with the various apartments in that building by apartment numbers. The rental on apartment 16 at 441 North Figueroa Street on the 1st day of March of 1942 was \$16.00 per month. The apartment at that time was rented as unfurnished. There was no furniture maintained in it by the landlord. The apartment was never rented during the time I was there as manager at a rental of \$20.00 per two weeks. I believe the rental on March 1, 1942, for Apartment No. 9 at 441 North Figueroa Street

(Testimony of Madge Bentley.)

was \$18.00 per month. That apartment, during the time I was manager there, never rented at a rental of \$22.00 per two weeks. I think it was rented as furnished and partially furnished. At the time the rental was \$18.00 per month it was furnished. The rental on Apartment No. 10 at 411 North Figueroa Street on the 1st day of March, 1942, was \$20.00 a month. It was never rented at \$20.00 per two weeks period during the time I was manager of that apartment house. It was partially furnished, I believe. On No. 11 at 411 North Figueroa Street on the 1st day of March, 1942, the rental was \$18.00 per month. It never rented at \$10.00 a week during the time I was manager there. It was partially furnished at the time the rent was \$18.00 per month. The rental on Apartment No. 3 at 435 North Figueroa Street on the 1st day of March, 1942, was \$15.00 per month. It never rented at \$10.00 per week during the period I was manager. At the time the rent was \$15.00 per month it was partially furnished—a small part. In each of these cases on the 1st day of March, 1942, the apartments were partially furnished.

The rental on Apartment No. 4 at 435 North Figueroa on the 1st day of March, 1942, was \$17.50 a month. It was never rented at \$10.00 per week when I was manager. On March 1, 1942, it was rented furnished. The apartment accommodations at 441 North Figueroa Street on the 1st day of March, 1942, were rather mixed inasmuch as we had to accommodate people with little furniture



(Testimony of Madge Bentley.)

of their own and some that might not have, and it wasn't a very good class of furniture, but it was usable for the class of people that we had, I believe.

"The Court: Well, when you say 'class of people,' can you tell us more in detail what kind of a neighborhood it was? Was it a workingman's neighborhood, industrial neighborhood or what?

The Witness: It was a working person's neighborhood, the poorer class of people.

Q. (By Mr. Tolin): At that time?

A. Yes, at that time."

The accommodations at 435 North Figueroa Street as of March 1, 1942, were similar. There was not much difference between the two buildings. The apartments were actually rented on the 1st day of March, 1942, all of them.

### Cross Examination

I was manager from 1931 until December 1, 1942, continuously. I was there all of the time. I occupied two apartments in that building. Apartment 1 and Apartment 3. I did not pay any rent. As manager I had free rent. I was managing it for the owner. There were several owners during my occupancy. Mr. Bliss, Maxfield Wilton, and for a period in which the property was in the hands of the court, Mr. Solof. I worked for two months during the change of administration and I am not entirely familiar with that. I do not have my records, I returned them to Mr. Crawford, the trustee, at the time I left there. Mr. Crawford from 1938 up



(Testimony of Madge Bentley.)

until 1942 was my landlord. He was the Referee in Bankruptcy and I took my orders from him. On March 1, 1942, he was my landlord and Mr. Wilton was not that I know of. On December 1 of 1942 I wasn't there. I left November 15, but I retained an asisatnt manager in 1942. When I left Mr. Crawford was still the trustee as far as I can remember. I occupied Apartments 1 and 5 and 3—not at the same time. I managed the remainder of the property, Part of it was untenatable. The two buildings, 431 and 435 North Figueroa Street, had the entire front off while they were widening Figueroa Street. Those buildings were three stories in height, both approximately the same size, and while they were widening the street, taking the front off and for a long time, approximately a year, there was no tenancy there at all in either of those two buildings. When they were vacated, all the tenants were moved out and all of the furniture was taken away. When the front was back on the apartments were furnished from the furniture that was taken out of them beforehand. It was the same furniture that was taken out.

Apartment No. 9 was partly furnished on March 1, 1942. I rented those apartments to whatever tenants came in. I do not remember when I rented that apartment last before March 1, 1942. At the time the tenant moving in there brought no furniture. It was later that they brought some furniture. It was completely furnished at one time and

(Testimony of Madge Bentley.)

partly furnished at another time. It was fully furnished when it was first rented. I don't remember whether it was partly or fully rented on March 1, 1942. The reason it was partly furnished was because the new tenant had furniture of their own. The people who had come in following brought some in and I had taken out some myself. I did not at any time have an inventory of the furniture in either of those two apartment houses.

Apartment No. 10 was partially furnished on March 1, 1942. There were just one or two pieces I believe. Perhaps a table, perhaps a dresser, and perhaps a kitchen chair.

On Apartment No. 11 on the 1st day of March 1942, I believe there was a dresser and a dressing table, and a table and two chairs. Just a dining table. There were two rooms, kitchen and bath. The tenant on March 1st was Richardson. The name of the tenant in Apartment No. 10 on March 1, 1942, was Aredes. There were man, wife and child. In the Richardson family there were man, wife and child. In Apartment No. 16 were man and wife. Mrs. Roman lived in Apartment No. 16. I believe her husband was in the Navy. On March 1st she was there by herself and had no child. Apartment No. 3 had a couple of dressers, just a small amount of furniture, that belonged to the house. I don't remember how many people were living in Apartment 9 on March 1, 1942. Mary Chaffitz was not in Apartment No. 9. Apartment No. 4 on March 1, 1942, was furnished. There were two

(Testimony of Madge Bentley.)

rooms, kitchen and bath. The furniture was chair, table, dressers, bed, stove and curtains. I was occupying those apartments. After the apartment house had had a new front put on, I had come in as manager. I didn't occupy No. 5 at that time. On March 1st it was occupied. (It was vacant.) It was a room on the back, it wasn't an apartment. When I came in it was not occupied. I believe it was around 1937 or 1938 when the front was restored and when I moved back in.

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**MRS. WILMA MATHEWS,**

called as a witness on behalf of plaintiff, having been first duly sworn, testified as follows:

**Direct Examination**

I lived at 441 North Figueroa Street, Los Angeles. It was supposed to be an apartment house. I lived in Apartment No. 16 there were a few pieces of furniture in there when we moved in. I would hardly call it partially furnished, but there were a few pieces. A bed, and a chair or two, and a table and a case, a broken-down case. No bedding. There were two rooms with the kitchen and bath. One room was a sleeping room. Government's Exhibit No. 6 for identification I suppose I have seen before. I think I had that. I paid the money to Mr. Wilton. I didn't pay it to anybody else ever. I paid Mr. Wilton, the defendant, the \$20.00 shown

(Testimony of Mrs. Wilma Mathews.)

on the receipt. I must have if he gave me credit for it. At that time I paid it to him because my husband advised me to. At the time I supposed it was for rent but at that time I had been instructed that I didn't have to pay any rent. Our rent was paid way in the future at that time. It was paid to keep Mr. Wilton away from my door. I will tell you that I was advised not to pay him any rent. I paid the money to apply as rent on the place. When I took the apartment I was told that the rent was \$10.00.

(Government's Exhibit No. 6 was received in evidence and is hereto attached).

# GOVERNMENT'S EXHIBIT No. 6

Date Oct. 30, 1943

Mr. and Mrs. Edgar M. Mathews  
441 No. Figueroa St.

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Sept. 28—Oct 5 .....	10.00
Oct. 5—Oct. 12 .....	10.00
	<hr/>
	20.00

Reed Payt

HUGH WILTON

Agent

[Endorsed]: Filed 3/14/44.



(Testimony of Mrs. Wilma Mathews.)

Cross Examination

The Office of Price Administration, the United States Government, advised me that I didn't have to pay any rent. I don't have any ill feeling toward Mr. Wilton as a man. I, or my husband, or both of us, do not owe Mr. Wilton any rent, we do not owe him, not according to the United States Government we don't. It was something like the 17th day of January that we moved out of there. Approximately the 17th of January. We moved in there about the 10th day of May, 1942. Exhibit No. 6 is dated October 30, 1943. I can't say for sure what the last rent we paid at all was. We have in our possession all of the rent receipts for all of the money that we gave to Mr. Wilton. I did not appear before the District Attorney of this County with two or three others complaining against Mr. Wilton for perjury. As to whether I went with Mrs. Aredes to the City Prosecutor's Office in an attempt to get a criminal complaint against Mr. Wilton, my answer is that I went there at the request of the District Attorney. (Tr. 49-50). I appeared in court at the request of the District Attorney. I was escorted there by the police officers as a courtesy to the District Attorney's Office. I didn't go to testify against Mr. Wilton, and they know. I told them that. I don't think it was the Federal District Attorney's Office. There was a bed—a piece of one. A top of it, there were no legs to it, it just sat on the floor. One could sleep in it if one had to. It wasn't a sleeping place.

(Testimony of Mrs. Wilma Mathews.)

There was a dresser when we came. There were three of them when we left maybe, but not when we got there. They were loaned to us, by one of our neighbors, considerable furniture. My husband did his drafting work on the kitchen table. There was some lumber nailed together, a wobbly piece that we could use as a bookcase, at Mr. Mathews' request, if you call that a bookcase. I put books in it. There were a couple or two chairs I guess, in the living room. I guess there were two in the kitchen. I didn't have a rocking chair when we went in there. I had curtains on the windows.

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CLAUDE W. HOFFMAN, JR.,

called as a witness for plaintiff, having been first duly sworn, testified:

Direct Examination

I live at Apartment No. 10 at 441 North Figueroa Street. I moved in last October of 1943. I have a wife and two children. I occupy an apartment, so advertised in the paper, I think it is called The Times. The apartment had a kitchen and what you call a dining room, bedroom and bath. I have had conversations with Mr. Wilton when I first moved in. I asked to see him personally and he didn't want to appear. He told me when we first moved in the rent was \$10.00 per week. It was supposed to be furnished but it was furnished partly. There was a folding bed that came out of the wall, a settee, a dining room table, four chairs,

(Testimony of Claude W. Hoffman, Jr.)

and an icebox and a few dishes, very few. It was old furniture. I have seen Government's Exhibit No. 7 for identification. The \$10.00 items on this statement are supposed to be for my rent, each one for the period of one week. Mr. Wilton appeared to hand me this receipt. He gave it to my wife and me and on it he was supposed to have \$3.21 to account for moving from the one place here to upstairs. The two \$10.00 payments happen to be for two weeks rent, \$10.00 a piece, one from the 1st to the 8th, and the other from the 8th to the 15th. This is our first rent receipt that we received in that place when we moved from downstairs upstairs. I paid the \$23.21 by check to Mr. Wilton, the defendant.

(The document heretofore marked Plaintiff's Exhibit No. 7 for identification was received in evidence as Government's Exhibit No. 7 and is hereto attached).

GOVERNMENT'S EXHIBIT No. 7

Date Dec. 1st, 1943

Mr. and Mrs. Hoffman

Address: 441 No. Figueroa St.

Account Forwarded

Rent Nov. 28 to 30 Inclusive at

437 $\frac{1}{4}$	7.50	3.21
	1.07	

Rent 441 Dec. 1-8.....	10.00
8-15.....	10.00
	<hr/>
	23.21

(Testimony of Claude W. Hoffman, Jr.)

Rate O.P.A. Reg. 4 people \$10.50. Gas & Elect.

will be paid by tenant above Min. 1.35

Rental Agreement to be signed later.

Gas 437 $\frac{1}{4}$ —Oct. 19-Nov. 18..... 1.84

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25.05

Reed Payt

HUGH WILTON

Agent

[On reverse side]: Apt. 10 2 Adults & 2 Children

[Endorsed]: Filed 3/14/44.

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MRS. MARY YOST,

a witness on behalf of the plaintiff, being sworn,  
testified as follows:

Direct Examination

I live at Apartment No. 14, 441 Figueroa Street with my husband and three children. We have an apartment consisting of living room, dining room, bath and kitchen and two in-a-door beds. This was the apartment I occupied during the month of December, 1943. I have lived in that apartment since September 26. I talked to Mr. Wilton about the rental rate of that apartment at one time when I was supposed to pay my rent and I was a couple of days behind and I got mad and said I was going down to the O.P.A. and he said that he was charging the right amount of rent. He said it was \$10.00



(Testimony of Mrs. Mary Yost.)

a week and he was charging it for the rooms or for the apartment, which wasn't wholly furnished. There was no dishes. I did not move any furniture of my own in there.

Referring to Government's Exhibit No. 8 for identification—I paid rent from December 18 to December 25 myself to Mr. Wilton for one week's rent from the 18th to the 25th for apartment No. 12, where I was living at that time. Mr. Wilton wrote the whole of that receipt in my presence.

The document was thereupon received in evidence as Government's Exhibit 8.

GOVERNMENT'S EXHIBIT No. 8

Date Dec. 20, 1943

Mr. and Mrs. Yost  
441 No Fig Bldg

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Rent Dec. 18 to 25 ..... 10

Recd Payt.

HUGH WILTON  
Agent

[Endorsed]: Filed 3/14/44.

MRS. LOUISE GREEN,

a witness called by and on behalf of the plaintiff,  
being sworn, testified:

Direct Examination

I lived at 435 North Figueroa Street, Los Angeles, for the period between December 11, 1943,

(Testimony of Mrs. Louise Green.)

and December 18, 1943. I don't know whether I paid it to Mr. Wilton or Mr. Fenkell. I believe it was Mr. Fenkell. I did not have any conversation with Mr. Wilton about the rent of that apartment. I agreed to pay that amount when we moved in. Mrs. Bowers showed me the apartment. I paid rent to Mr. Wilton of \$10.00 a week. Regarding to Government Exhibit No. 9 for identification, I paid that money to Mr. Wilton. He wrote the receipt in my presence.

(The document marked Plaintiff's Exhibit No. 9 for identification was received in evidence as Government's Exhibit No. 9, and is attached hereto).

#### GOVERNMENT'S EXHIBIT No. 9

Date Dec. 11, 1943

Mr. and Mrs. Mike Green  
435 No Fig Bldg

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Rent	Dec. 11 to 18 .....	10.00
	Bal to Dec. 11 .....	5
		<hr/>
		15.00

Reed Payt

HUGH WILTON

[Endorsed]: Filed 3/14/44.

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It was a furnished apartment. There was no bedding or dishes. There was a living room, dining room, bathroom, kitchen, and two wall beds.

No cross examination.

## GEORGIA BOWERS,

a witness called on behalf of plaintiff, being sworn, testified:

## Direct Examination

I live at 435 North Figueroa and moved there last April with my husband and two children. We had the apartment, two rooms, bath and kitchen. We had a kitchen and a living room, the latter, we used for the children, and we have a bedroom. We rented from a manager that used to be there, a Mrs. Campbell. I talked to Mr. Hugh Wilton about it the day we moved in. He just told us the rent was \$10.00 a week and we paid it. We have paid that rent regularly. Exhibit No. 10 for identification is a rent receipt that I received for rental. It correctly reflects the transaction as to dates and amounts. I paid the money shown on that receipt to Mr. Wilton. That is his signature. The receipt shows \$15.00. We only pay \$10.00 a week. We probably paid him \$5.00 one week, and then caught that up the next. We also paid the money shown on Exhibit No. 11 for identification to Mr. Wilton. That was paid for rent from December 12 to December 19 of 1943, and correctly reflects the transaction. There was some furniture in the kitchen and in the living room, and a chest of drawers, and in the bedroom it had a bed, dresser, and, of course, the kitchen and the bath.

(Exhibits No. 10 and 11 were received in evidence as Government Exhibits No. 10 and 11, and are hereto attached).

(Testimony of Georgia Bowers.)

## GOVERNMENT'S EXHIBIT No. 10

Date Dec. 6, 1943

Mr. and Mrs. L. C. Bowers

435 No. Fig

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Rent	Dec. 5-12 .....	10
Bal	.....	5
		<hr/>
		15

Recd Payt

HUGH WILTON

[Endorsed]: Filed 3/14/44.

## GOVERNMENT'S EXHIBIT No. 11

Receipt

Date Dec. 14, 1943

Mr. and Mrs. L. C. Bowers

435 No. Figueuroa St.

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Rent	Dec. 12 to Dec. 19 .....	10.00
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Recd Payt

HUGH WILTON

Agent

[Endorsed]: Filed 3/14/44.



## GEORGIA BURNS,

a witness called on behalf of plaintiff, being first duly sworn, testified:

## Direct Examination

I am employed at the Office of Price Administration and was employed there during September of 1943. I have charge of registration of hotels and rooming houses. It is a different department than the one that has charge of residences and apartment houses. I do not work in the apartment house section. During September, 1943, I received from Mr. Hugh Wilton a form with respect to a proposal to register certain property as a rooming house. Government's Exhibits No. 4 and 5 are our registration, our DH Form. When I received those I had a conversation with Mr. Wilton about them. There was a great deal of conversation because these apartments were originally registered under our DD-6-D Form, which is the apartment form, instead of for rooming houses or for rooms. Mr. Wilton came in and said he had some apartments registered and he brought his copy in so that we could see what they were, and he said that he had had these different flats registered under the housing form and that he had decided, on account of the shortage of housing conditions in the city that he was going to break up the flats where they had only been occupied by one family and he intended to make them available for five or six families by just renting out the rooms, so he came in to discuss the matter with me and we discussed the registration

(Testimony of Georgia Burns.)

form that he would have to use if he made the switch. Government's Exhibits 4 and 5 were filled out and some forms like them. I suppose these are the ones. He registered them with me on or about the date they bear, September 28, 1943. I did not tell him that it was all right to go ahead and charge the prices that were indicated on those forms. That is not within my jurisdiction at all. He told me that he had rehabilitated these flats and got them into good condition for renting in a rooming house condition rather than as apartments as they had been, and so I then told him that we would accept the registration. That is what we do, and it goes into the examination department for an inspection. I have no authority other than just to simply accept the registration and then he had to wait an approval before he could receive an O. K. on that registration. He was very anxious to have it approved so that he could go ahead. Well, we did everything we could for him. I told him we would have an inspection on it, and we did have a special inspection order for him. He came in and he said he was in a great hurry and he wanted to have the registration approved because of some case in court on an eviction and he wanted the approved registration, so I told him that we would turn it over to our examiner and that they, in turn, would order a special inspection. One of our inspectors went out and took care of it that night, and he was to come back the next morning to find out if it was approved, and he did. He came back in the morn-

(Testimony of Georgia Burns.)

ing and I told him that it had not been approved and that I could do nothing about it, and he said well, his attorney had told him that he would have to go ahead with the case without the registration and that he was going to do that, and that he had just found out that he couldn't wait for it. The proposed registration of the property as a rooming house, rather than an apartment house, was never approved. When it has been approved there is a little area approval stamp up here in the corner. I don't recall that he ever came back after that again. It was on the next morning I told him it was not approved. I told him that we had not had an approval on it and he said he couldn't wait then, that he would just go ahead, and his attorney had said that he could operate that way without the registration.

#### Cross Examination

I don't recall the day, he says here September 28. The day they bring them in, they are dated. I don't know about the date, because I couldn't possibly remember that. He was in many times, I wouldn't know the dates. I think I took my vacation quite late in the summer. I am not quite sure. I think it was in August. I do not remember his coming in in July but I do remember talking to Mr. Wilton many times. Mrs. Iliff was my supervisor. It is quite difficult to remember. I am quite sure I didn't say to Mrs. Iliff that the legal department had just told me that Mrs. Iliff was the one



(Testimony of Georgia Burns.)

who would now make the approval of the registration or re-registration. I am sure I didn't say that. I really can't tell you how many registrations or re-registrations Mr. Wilton made with me. There were quite a few. The dates, I wouldn't know. It was over quite a period of time in the year 1943.

#### Redirect Examination

I really couldn't say whether Mr. Wilton was in there to see me about other properties than these at 441 and 435 North Figueroa Street. It seems to me that there were various properties. I am sure there were, but I see so many hundreds a day. The inspector who went out there was Mrs. Barney.

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#### KATE BARNEY,

a witness for plaintiff, being sworn, testified:

#### Direct Examination

I am rent inspector of the Office of Price Administration. I saw Exhibits No. 4 and 5 later the next day, but we work entirely blind. We get out and get the evidence from the ground up. We are not prejudiced by any previous registrations. I made an inspection of these properties at 441 and 435 North Figueroa Street. When I went out there to make that inspection, I had not seen Exhibits No. 4 and 5. I had only my instructions to find out whether they were apartments or hotel rooms. The inspection was ordered, I think, on or about Oc-



(Testimony of Kate Barney.)

tober 1. It was in or around October or November. I can't remember the exact date. (Referring to document it was made November 16, 1943). I inspected 441 and 435. These were the two front apartments and a rear. They are three story apartment houses with a stucco front and the majority of the apartments were two and three room apartments, housing units under our classification, classified as housing units, which constitute living rooms, bedrooms and kitchens. Most of them have their own private bathrooms. I saw Mr. Hugh Wilton, the defendant, on that occasion. The inspection was ordered around 3:30 and we called Mr. Wilton. The assignment clerk called him, or perhaps it was Mrs. Iliff, and made an appointment for 5:00 o'clock and we met in front of the premises at 5:00 o'clock, myself and Mr. Wilton. He and I inspected the premises and we made out a list on each apartment. He gave me the details as to how many rooms each apartment or each unit had, how many occupants, and, as near as he could remember, how many occupants lived in these units as of March 1, 1942, and how many occupants were living there at the time. He also gave me the information as to whether they were furnished or unfurnished and what rentals were being charged at the present time, and the amount of the utilities that were being paid, that the landlord paid or that the tenants paid. We looked at some four or five apartments. We went around. It was around dinner time, and, as I re-

(Testimony of Kate Barney.)

member, we rapped on a number of doors the tenants were not in, but we got a pretty good cross-section of the both apartment buildings and the class and type of apartments and rentals that he had. There were no rooms that I found at all that were rented solely for sleeping rooms. They were all units. Mr. Wilton didn't seem to consider the subject of whether it was a rooming house or apartment house at all, he just gave me the report. He would say how many rooms, Apartment No. 3 had. He would tell me how many rooms, and I would put it down, and then I would read what I had written down on my report back to Mr. Wilton and it was in that way the transaction or the report was made. I can't tell you definitely the numbers of the apartments I went into. We were required to take a cross-section in our inspection. If I had access to my report I could. (Referring to document). My report reads that Apartment No. 16 at 441 North Figueroa Street is a three-room apartment, toilet and bath, rented for \$10.00 a week, and the land lord paid the water and the main or the gas and lights, and there were two occupants, and one occupant as of March 1, 1942. I say I don't know what apartments we were able to get into. It was about dusk, and I took a cross-section of the two apartments, going in to approximately five or six different ones of the apartments. I had information about every apartment. I got the information from Mr. Wilton. He verified the information

(Testimony of Kate Barney.)

which contained a certain group of the tenants in these two buildings. I made a report back to the office the first thing in the morning. I took this report back because they were very anxious to give Mr. Wilton an answer the next morning as to whether his registration would be acceptable as a hotel or rooming house.

### Cross Examination

Every place I went in and saw myself I found that Mr. Wilton's statements were verified.

"The Court: By the way, in these apartments that you visited, you say that he gave you the list of persons?

The Witness: Yes, your Honor.

The Court: Were those so arranged that you could shut a door and occupy a room separately or so that persons, different persons, not belonging to the same family could occupy them?

The Witness: They were not, your Honor. They were separate housing units because of the bath.

The Court: Were there any outside baths?

The Witness: No, your Honor.

The Court: Down the hall to which resort might be had any persons who might not be an occupant of any of the units?

The Witness: No your Honor. It was only the laundry equipment that could be shared, which was in the basement at that time, by the different occupants of the different units.

The Court: Did you discuss with Mr. Wilton at



(Testimony of Kate Barney.)

the time of the inspection the requirements of a rooming house or a hotel as distinguished from an apartment house?

The Witness: I didn't, because he gave me the information and it was right there. It was right before our eyes that it was an apartment house.

The Court: But you were told that he was seeking a different classification?

The Witness: That depends on our inspection and whether it is changed from an apartment to a rooming house.

The Court: Now, did you ask him upon what he based his desires to have the change made?

The Witness: Naturally I asked him.

The Court: What did he say?

The Witness: Well, he said that he listed them separately and I said, "Mr. Wilton, these are apartments," and he said, "Well, let's go on and take these unit by unit," and we sat down together and we took them unit by unit and he told me how many rooms and what furniture and furnishings there were, and what they consisted of.

The Court: Before you left, did you tell him in effect that the classification he sought wasn't justified by the establishment?

The Witness: Your Honor, it isn't my——

The Court: No, I am not asking you whether it is your province, but did you tell him at all that you didn't think it was a rooming house?

The Witness: Yes. The evidence was there that it was definitely apartments.



(Testimony of Kate Barney.)

The Court: And you told him so?

The Witness: Yes, I did, because they were definitely apartments and there was no doubt in my mind and I don't think there was any doubt in his mind that it was any other way.

The Court: I see. All right. Step down.

(Witness excused.)

The Court: Does any member of the jury want to ask these smart girls any questions? They seem to know everything.

(No response.)

The Court: All right.

Mr. Tolin: The Government rests.

The Court: All right.

In the absence of the jury defendant moved the Court to dismiss the information and discharge the defendant. The Motion was denied.

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R. M. CRAWFORD,

A witness called on behalf of defendant, being first sworn, testified as follows:

"The Clerk: Will you please state your name?

The Witness: R. M. Crawford.

Direct Examination

By Mr. Taylor:

Q. Mr. Crawford, what is your occupation?

A. At the present time you mean?

Q. Yes.

(Testimony of R. M. Crawford.)

A. Manager of the accounting department for the Shipbuilding Division of the Consolidated Steel Corporation.

Q. Were you the trustee in bankruptcy for the estates of Maxfield-Wilton and Associates, Incorporated, Residential Income Properties, Incorporated, Wilton-Maxfield Management Company, Bankrupts, from on or about the month of November, 1938 to on or about December 1, 1943?

A. 1942.

Q. 1942? A. That is right.

Q. My error, 1942. A. Yes.

Q. And as such, was one of the assets or liabilities one of the properties of this bankrupt estate the properties that we have been talking about here, 435 and 441 North Figueroa Street?

A. Yes.

Q. Now, at the time that you assumed custody of these properties, or at any time during your entire tenure of office, was there ever filed or made up, so far as you know, an inventory of the furniture that ever was in these properties?

A. Yes. There was an inventory at the time I took over the properties as Trustee. That inventory was made by a special inventory man that was appointed by the court to take that inventory.

Q. And then, after that inventory was made, can you tell me whether Figueroa Street, upon which these properties abutted, was widened?

A. Yes.

(Testimony of R. M. Crawford.)

Mr. Tolin: To which we object on the ground it is immaterial.

The Court: I think it is too remote. I don't think the widening of the street has anything to do with it at the time we are talking about. It is evident that during this period it had been out for about a year.

When were you discharged?

The Witness: The bankruptcy proceedings were terminated last November, 1942, and my definite discharge was somewhere in February, I believe.

The Court: They usually keep it open a few months?

The Witness: Yes.

The Court: In case anything comes up they won't have to reopen the estate, is that right?

The Witness: That is right.

Q. By Mr. Taylor: Now, then, approximately what was the date, as near as you can recall, when the front of the building was taken off in the widening of Figueroa Street.

Mr. Tolin: To which we object on the ground that it is irrelevant, immaterial, incompetent, and too remote.

Mr. Taylor: If the Court please, a witness here testified for the Government that the major repairs to the building had been made in 1937 or 1938. I want to fix the time.

Mr. Tolin: It was brought out by counsel for the defendant on cross examination. I didn't ex-

(Testimony of R. M. Crawford.)

pect because it was the date apparently fixing the time. However, I don't think it is relevant.

The Court: It is not a material issue. You can't bring something out on cross examination and then start to impeach a person on that. I will sustain the objection.

If you want any testimony in or about the time of the property, or even a year before, I will allow you, but to go back to the widening years before, is too remote.

Mr. Taylor: I think it was within the year before, if your Honor will let me pursue it. I believe it was testified that the front was put on about 1941.

The Witness: Well, my best recollection of the date there would be about 1940 some time.

The Court: Were you still trustee?

The Witness: Yes, sir.

Q. By Mr. Taylor: During that time, before it was repaired, and for approximately a year past, were there any tenants in any of these buildings?

Mr. Tolin: To which we object.

The Court: Overruled. That's all right.

Q. By Mr. Taylor: Now, then, when the new front was put back on the building, did you then delegate to some person the authority to rent the building or the task of collecting the rent?

A. Yes.

Q. Did you instruct such person, or did you not, to rent—strike that.



(Testimony of R. M. Crawford.)

What were your instructions, if any?

Mr. Tolin: To which we object on the ground that it is irrelevant, immaterial, and hearsay.

Mr. Taylor: If I can tell the Court what I propose to prove——

The Court: Go ahead.

Mr. Taylor: I propose to show, your Honor, that the Trustee instructed that the premises be rented for whatever they would get with a view to procuring sufficient revenue to pay the administrative costs without any consideration——

The Court: That brings in an inquiry as to the reasonableness of the rental, and that is not the subject of the inquiry in this particular case. We are not sitting here reviewing the acts of the board.

Furthermore, it is apparent that at the time of the violation that is charged here, he had long been discharged.

Mr. Taylor: It hasn't been a year yet, your Honor.

The Court: That doesn't make any difference.

Mr. Taylor: I think, your Honor——

The Court: There is only one question involved here. The property was registered at a certain rental prior to the date. The question is whether there was more charged than that, and that is all there is in this lawsuit. The mere fact that he rented it too cheaply, he is just out of luck.

Mr. Taylor: Well, he is out of luck, certainly.

The Court: Well, he couldn't rent cheaply. His remedy is to apply to the board for a reclassifica-

(Testimony of R. M. Crawford.)

tion in the light of the conditions, but you couldn't in this case, show that the O.P.A. made a mistake in freezing this man's rent as of March 1st because the rentals were too low.

Good Lord, there isn't a landlord in town that wouldn't make that sort of argument, and there isn't anyone who doesn't feel it. We are not in a position to do that in this lawsuit.

Mr. Taylor: I feel that the matter of what is fair and equitable should enter into, your Honor.

The Court: It is not a defense to a violation of a criminal law. There are methods of reviewing arbitrariness in the rental regulations and they are provided under the law, but a person can't come in court and say that the rents were too low. If that were true, then, we would have a jury in every case sitting in judgment to determine whether they ought to have charged that much or allowed more.

Mr. Taylor: One other point, your Honor, is that in the matter of relationship. In these matters, one of the factors which always comes up is the existence of a special relationship between landlord and tenant. Does not your Honor feel that the relationship of a referee or trustee in bankruptcy as to persons who will be prospective tenants of the bankrupt estates which he is administering, are special relationships which the jury is entitled to consider?

The Court: I don't think you can show in this case that the rentals as of March 1st were not fair

(Testimony of R. M. Crawford.)

rentals and that for that reason he had a right to charge more. His remedy, he having made the original registration, or the original registration having been made during the incumbency, was to apply for relief to the administrative agency.

Not having done so, they couldn't go out and violate the law and then say that the rents were too low, because otherwise I would have to take the jury out to the premises and have them go into these apartments, and from the expressions on the faces of some of the ladies who live there, we would have to determine whether that much ought to have been charged for that sort of an apartment, which provision the law does not take care of.

Mr. Taylor: But it isn't out of bankruptcy yet.

The Court: What do you mean?

Mr. Taylor: The estate, there has been no discharge of bankruptcy.

The Court: Well, the estate has been closed.

Mr. Taylor: No, your Honor. I can't agree with you. I will bring the file down. The operations of these has been turned over by proper order to the bankrupt corporation.

The Court: Yes. Well, discharged doesn't mean anything. The trustee has been discharged and is therefore not operating the property.

Mr. Taylor: But was on March 1, 1942.

The Court: But was not at the time of the alleged offenses and that is what we are interested in. Nor can I say this, that the trustee in bankruptcy, you see, could authorize a person to violate a rental



(Testimony of R. M. Crawford.)

regulation. I don't see the point you are making at all except that you are trying to show that the rents were fixed too low, and that the people had to raise them, and that is not a defense in a case of this character.

Mr. Taylor: Well, that is one thing. I want to show the special relationship which existed at the time, your Honor.

The Court: I have no objection to showing that he authorized the rentals and any instructions he gave, but I am going to tell the jury that a trustee in bankruptcy is merely administering the property, and the Court has no authority to authorize anybody to violate the law.

Mr. Taylor: All right.

The Court: I am going to do that, so with that, you can ask him all you want to, but I will have to do that.

Mr. Taylor: All right.

The Court: In other words, if he, as trustee in bankruptcy, made a mistake and rented the property too low, he, like anybody else, was bound to go before the O.P.A. and try to get his remedy through administrative process.

If he didn't that, then, his successors are not in the position to say that they can violate the law. We are not here to test the reasonableness of the regulation. Congress has not given us that power.

The question is, is it a valid regulation, and was it violated, and that is all there is to this lawsuit,



(Testimony of R. M. Crawford.)

or to any lawsuit involving the O.P.A. We try them all. We have tried gasoline coupons and all sorts of things. We didn't try to determine whether they ought to have only so many gas coupons, so many gallons of gas, on each coupon, or whether they were right in limiting persons to it, because if we did, why, we would enter a field in which the Congress has not allowed us to enter.

Q. By Mr. Taylor: At the time of the registration, you simply gave the typewritten list of the units and the amounts charged for the rents as of March 1, 1942, did you, Mr. Crawford, to Mr. Wilton?

A. What date?

The Court: March 1, 1942.

The Witness: The registration, I had nothing to do with any registration whatsoever.

Q. By Mr. Taylor: If I remember correctly, you simply gave a list of the apartments and the rentals that were charged as of March 1, 1942, to Mr. Wilton.

A. Yes.

Q. You gave it to him approximately between November 1st and December 1st of 1942, did you not?

A. Somewhere in there, yes.

Q. Now, then, at the time you gave it to him you didn't know of your own knowledge whether or not each of these units were furnished, unfurnished, partly furnished, or anything about them?

A. Not every individual unit, no, because I was just interested in the overall property, and I had my managers and outside men looking after that part of it. Of my own personal knowledge I

(Testimony of R. M. Crawford.)

wouldn't be able to tell about any particular unit.

Mr. Taylor: That is all.

The Court: Any questions, Mr. Tolin?

Mr. Tolin: No.

The Court: You may step down."

(Witness excused.)

#### The Government Rested

"In the absence of the jury defendant moved the Court to dismiss the information and discharge the defendant. The motion was denied." (Tr. 83-93)

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#### HUGH WILTON,

the defendant, called as a witness in his own behalf, being first duly sworn, testified as follows:

"I received the list of units for these premises from Mr. Crawford about December 1, 1942. Prior to December 1, 1942, I had not been connected with the premises in any way since 1938. I did not receive any information from Mr. Crawford prior to the time I received the lists containing the units and rents. As to whether the units were furnished or unfurnished, I received a list through the mail from Mr. Crawford setting forth the rental rates as of March 1, 1942 and December 1, 1942 and it didn't indicate whether there were any of the units rented furnished or unfurnished. I went down to the premises and looked it over. I looked at all the apartments I could get into. There were one or

(Testimony of Hugh Wilton.)

two apartments that were locked up and the tenants were not home. I found definitely in cases where they had been rented unfurnished, that the company had not furniture in those units. The ones I could check definitely were still there in the premises and had the flat rented unfurnished with their own furniture in it. The ones that I could check accurately, were, I believe, twelve out of sixteen in these two buildings, for instance, No. 3, 4, 9, 10, 11 and 16 of those units. No. 16 was occupied by a tenant who said she had rented it unfurnished and that all furniture therein was her own. No. 11 was occupied by a Mexican by the name of Gonzales and she said most of the furniture was hers, but some of it also belonged to the firm. We didn't have a meeting of minds as to what items were hers but I believe in that particular one she identified a dining room table and three chairs as belonging to the firm and I put those on the list that I reported. The record which came into my possession indicated who the tenant was on the first of March, 1942, in apartment 16. It was Mrs. Roman. I met her when I went down to the building. She lived in that apartment alone. According to her statement there was no furniture in that apartment that belonged to the property. She moved out later and took all the furniture.

"As to apartment No. 10 which is concerned in Count Three. The records didn't show any furniture there as of March 1, 1942. Mrs. Aretes was ill with a nervous affliction of some kind and I had



(Testimony of Hugh Wilton.)

great difficulty finding out from her what her position was, but finally ended up that she had a couple pieces of furniture, apparently loaned to her by Mrs. Bentley, and I reported it as partially furnished. When Mrs. Aretes moved out she took the stove and all the furniture in the apartment except a small dresser and one or two kitchen chairs.

“There was nothing in the record to indicate whether apartment No. 11 was furnished or unfurnished on March 1, 1942. I wasn't able to determine from talking to Mrs. Gonzales very definitely what was there. When she moved out she took all the furniture except, I believe, two dining room chairs and possibly a rocking chair.

“I have no idea whether apartment No. 3 was furnished or unfurnished as of March 1, 1942. I finally caught up with the Filipino sailor who has been testified about and talked with him and he could not state definitely what he had there. He had no bedding, no mattress and he said he worked in the Navy and came home every Saturday night and he claimed he had a cover to a chair that was his personal property and a bed. When he left he took the stove. He said it had been given him by someone else in the building and he took all the furniture except a couple bed room chairs and a dresser.

“There is nothing on the list to indicate what was in apartment No. 4 as of March 1, 1942, but when I examined the apartment, the tenant said it was



(Testimony of Hugh Wilton.)

fully furnished. Later on another tenant claimed the stove saying it had been given her by another tenant and when she left she took the cover off the davenport which was in a bad shape. She had no bed in the living room but a bed in the bedroom. She left the bed and a little davenport without a cover and two or three chairs.

“At the present time seven people live in apartment No. 16, a man, wife and five children.

“Q. How many people are living in Apartment No. 10?

Mr. Tolin: To which we object on the ground that it is irrelevant and immaterial.

Mr. Taylor: I feel, your Honor, that it is entirely material. It is a part of the *res gestae* of the housing conditions, and the accommodations.

The Court: How many live there now, or rather, lived there on the date in question?

Mr. Taylor: On March 1, 1942?

The Court: Yes. The only dates that we are interested in are the dates set forth in the indictment. We are not interested in the now.

Mr. Taylor: The point was, your Honor, that there is no claim apparently being made that there was ever a petition to increase the rental on that basis, and therefore, that it is within the issue here.

The Court: Well, the conditions as of a particular date—go ahead in what you are doing at the present time.

Mr. Taylor: All right.”

(Testimony of Hugh Wilton.)

Mr. and Mrs. Mathews were all the tenants in occupancy in Apartment No. 16.

Mr. and Mrs. Hoffman live in Apartment No. 10.

Mr. and Mrs. Yost and their three children live in Apartment No. 11.

When Mr. and Mrs. Green lived in Apartment No. 3 there were three in the family, including one child. Mrs. Green took care of the halls and took care of the telephone calls for which I paid them \$1.50 a week.

Mr. and Mrs. Bowers and two children lived in Apartment No. 4. That is the apartment where the Filipino lived on March 1, 1942. There were three in the family then. The Philippino sailor lived in Apartment No. 3 on March 1, 1942. The list I had from Mr. Crawford didn't cover what apartments were rent free for Mrs. Bentley but when I got there I found that Apartments No. 1 and 5 had been occupied by Mrs. Bentley but there was no record of it. I filed my first registration in connection with these properties with the Office of Price Administration in the early spring of 1943. I found I had so many I couldn't file them on time so I wrote a letter to the Office of Price Administration and asked for an extension on the registration until January 1 and I got a letter back that it would be O. K. I filed them all within that period. Along about February 6, to be exact, I first talked to Mr. Shobart down there, Warren L. Shobart, attorney at their office, I went there by appointment and I sat there for an hour and we talked for an hour and

(Testimony of Hugh Wilton.)

half and I consulted with him about that particular building, and he advised me generally how to proceed and he said the intent of Congress was to house more people in the units we have. He said there was no way of getting any property for additional housing units by building, but that the landlords or agents for land lords that had as many as I had, he hoped that we would let down the bars and put in children, and he expected us to put them in a third of the units. In houses where we had one, he wanted three and four, and in houses where we had twenty-five he wanted around one-third, at least, to show good faith. This conversation was on the 6th of February, 1943. It was a general conversation with Mr. Shobart which he said was off the record to the extent that he would not like to be quoted, but after about an hour and a half on discussion on the question of rates, he said that he agreed that we would get \$10.00 as a fair charge for the first tenant other than the normal tenancy, and that he would see that those were approved as they came in. "I made notes in a little black notebook on all the points, and we got to the bankruptcy, and he advised me on that matter that so far as he was concerned no one was competent to and had any authority; he said all the authority came from, not from instructions from Washington, but that he advised me to get an attorney. So I got the man, this Mr. Bartlett, my attorney, and I told him what Mr. Shobart had said and in regard to vacu-



(Testimony of Hugh Wilton.)

cies, he told me when we had a vacancy that there was no provision in the law that would permit us to get new rates.

"I told him that we were in a business where we never rented apartments unfurnished, as that building was set up, and that we had the furniture somewhere and that the furniture would be transferred as secured in on the units in the building. All the Units in the building that went vacant would be re-furnished as it had been before the bankruptcy.

"He said that there was no provision that we could get rates upon the apartments when they were vacant, and he said to go ahead and fill them up and then take the matter up with him.

"In regard to the question of labor, there was a tenant there that got paid for doing janitor service there in these buildings, and I wanted advice on how to discharge the tenant, who was also a laborer, and hire a new person to do the janitor work."

He told me in all cases where I had explained to him that they were mostly rented unfurnished, and that the ones that were supposed to have furniture, apparently had none, and I had to recondition them all and refurnish them when they became vacant, and he advised me that the only way to do was to rent them, preferably to families with children and then petition them when we got the change made over.

"The Court: He didn't tell you to start charging the rent and get the approval afterwards?

The Witness: Yes, sir.



(Testimony of Hugh Wilton.)

The Court: Te told *me* to start charging those rents?

The Witness: That's the only way you can, there is no—for example, I might petition on vacancy. There is no way you can rent those apartments when they go vacant, your Honor. You could not change them over while they were vacant. He said there was nothing for him to pass on.

The Court: How did you know in the first place whether they were going to approve the change you made?

The Witness: Mr. Shobart told me that for the first tenant over and above normal we would get \$10.00 a person.

The Court: I see. All right.

The Witness: In other words, I petitioned on buildings down there and they were turned down on technicalities and sent back, and then I went down and requested advice, and explained that when the vacancies occurred, we would recondition and paint, and then after we had furnished them we would take it up with them periodically, as he said to do. I took it up with him periodically.

The Court: I see."

"The Witness: I went down to the Office of Price Administration with the list, of the work that we had put in. We had spent about \$4,000 of the \$7,000 that we spent, reconditioning those properties, and I took along the information to show and did show Mrs. Burns.

(Testimony of Hugh Wilton.)

"We had 67 rooms there, and I asked for and she gave me a form. Now, this form had only possibly room for 30 rooms, and she explained to me that I had to fill out the rest, and she gave me additional sheets, and then she finally got a third sheet for more than three persons to a room, which the rooming house form was, and she asked me to fill them out and bring them in.

"She wanted to know—she was interested in two things; when we were going to complete our work, and when we were going to have them furnished. So, I took that form with me. I had to leave the State for about three weeks, and I came back with the form made out and showing the 67 rooms all on one paper, one group of papers in sequence.

"She looked that over and went up to the legal department and came back and asked me to—she gave me a new set of forms and asked me to show the difference, the next set of papers as to the rooms that were serviced by a kitchen and bath. I did that, and I took those back and she then became confused with the numbers on the rear of the buildings. They were  $433\frac{1}{4}$ ,  $\frac{1}{2}$  and  $\frac{3}{4}$ ;  $435\frac{1}{4}$ ,  $\frac{1}{2}$  and  $\frac{3}{4}$ , and there was still an additional unit,  $\frac{7}{8}$ .

"So, she then said I would have to make them out all over again and bring them back, preferably some time after July 15 or 20, or something like that.

"I believe I went four or five times to see her along about July and she was on her vacation and couldn't be reached. The last or the next to the

(Testimony of Hugh Wilton.)

last registration was made up on five registration, one on 435-1/2.

Mr. Tolin: I will object to this unless the date be fixed.

The Court: Well, as near as he can tell. He is trying to fix the date.

The Witness: Well, that in its final form would be September. We finally got it completed in September, I believe, around September 20, and we then had five petitions. One was for No. 435 and it included only six of the eight units for the reason that Mrs. Burns explained to me that there was a legal division upstairs, that there had been a change of some kind and when we had  $\frac{3}{4}$ , we had a situation where there was  $\frac{3}{4}$ th of the original tenants that had left the building, that we were then entitled to re-registration on this rooming house form, and on No. 435 it showed six of the apartments of the eight that were there. The No. 441 building had only two of the original eight apartments and we showed six on that application.

"The third building, which is a two-story building in the third petition, a two-story building in the rear, that has seven units. There were still two tenants of the original six tenants there, and that was only one-third of the tenants at the time I was making it.

"We had taken our plans to construct another unit, so she said when that was complete to bring it back in and she would release that petition on the seven units. There were four or five petitions on the two houses in the rear occupied by a single fam-



(Testimony of Hugh Wilton.)

ily. She told me also, as I told you, that it would be helping people who wanted to make these changes when that kind of a condition existed.

"The other thing was more or less to the rooms. I had with me, and the purpose of putting the kitchen and bath on this fourth petition was to show Mrs. Burns, and she could see looking at it just where it was changed over to rooms, to a rooming house from an apartment house, and how the tenants would have access on the floor of each building from the rooms to the bath.

"The health authorities had asked us to have on each floor a bath access from all apartments or all rooms, one for the women, and one for men, and I showed her those and she understood it fully. I explained to her that we had on all four of those units a condition existing where right on the hall the doors could be shut and then you could accommodate any family.

"You see, after talking to Mr. Shobart we always put—we had perhaps four or five families who came along. We took the ones with the largest number of children. One family would have three and another would have five, and they would be brothers-in-law or something, so we housed them in the unit we had, for instance, No. 5 that Mrs. Bentley used to have on the third floor in this corner and has a bath as she mentioned, and we put the family up there with those children and the bath, and we would rent them another unit for the other family with the kitchen and the idea would be



(Testimony of Hugh Wilton.)

that they could use the common kitchen, and we have always done that when we could. Whenever we could get more people to use the kitchens we would do that.

“And Mrs. Burns finally, on the 28th day of September,—I believe we had the petition on file in final form. She said, “Excuse me a minute,” and she was upstairs about 30 minutes. She came downstairs and went behind my chair. She passed behind me to speak to Mrs. Iliff and she said to Mrs. Iliff, “After all the cases I have had here, I was very surprised to learn that you, Mrs. Iliff, have the authority to approve this registration.”

“And then she sat down and went over all the details with Mrs. Iliff. Although she was sitting within six feet of us I waited at least an hour, and altogether four hours. That day I was there 2½ hours, September 28th, from 9:00 in the morning until 11:00 in the morning, at which time we had it all straight except getting it segregated into seven.

“I went and got the forms and rebuilt it into seven applications and then took it back and she explained it in detail, and Mrs. Iliff finally said that she understood and approved it, so that this, that we had three-quarters of the original tenants no longer on the premises, was finally set up by Mrs. Burns and I turned it over to her all my original registrations. She had all the registrations that I had originally filed in the fall on January 1, 1942, and she took those and said that they would be destroyed.

(Testimony of Hugh Wilton.)

"So I asked her, I said, 'Mrs. Burns, when will these—when can I operate under this?'

"She said, 'They have granted—we have granted you, Mr. Wilton, the privilege of re-registering your buildings on this form and it is effective February 15, 1943.'

"And I have in my file there the one she did approve about a month and a half before except that it was too much—it wasn't set up to please her. It wasn't so easily understandable either.

"So, she signed the record out, the recommendation, which was in her handwriting on the petition, for verification to me that it was retroactive to February 1st, as Mr. Shobart had told me it would be, that when we got them rented and reconditioned that they would be rentable and could be re-registered, and they were re-registered.

"Mrs. Iliff then asked me, she said that I had the re-registration and that she was glad to be able to get it for me and I left, and I left all my original copies. It was November 16th, or about November 16th.

"Mr. Joseph Geeron asked me for one of the registrations as he had an eviction suit on the premises there in one of these six units, but on the premises, so I went down to the O.P.A. about 3:00 o'clock to get it, at which time I asked for Mrs. Burns. She wasn't there, but showed up a half hour later.

"She was upstairs and she brought out the file when I told her what I wanted and it was the first

(Testimony of Hugh Wilton.)

time that she told me that there had been a complaint signed and was stuck on one of these forms, one of these petitions for re-registration, and she said that there had been trouble in the premises, in the department in the past over some decisions on these new—over her making the final decision on these new registrations and that it was now necessary, and that was the first time of all the conferences I have had with her that I have heard anything about it, these inspections.

“So I said, ‘all right. If there is going to be an inspection, it will please me if you will get somebody to come up with me.’

“So she then telephoned and walked around for about 30 minutes and finally told me that she had made arrangements for Mrs. Barney, I believe, to meet me at 5:00 o’clock.

“She showed up at 5:30, and Mrs. Barney went with me and we went—she is not as young as she once was, any more than I am—and we made a thorough inspection of the rear building containing seven units.

“Then, we went up on the third floor and sat down at a table in Apartment No. 5 that had a kitchen too and I asked her if she didn’t want to see the rest of them before we started doing any writing, and she said no, that she was tired and wanted to smoke a bit and rest. Then we stayed there for about 15 or 20 minutes while she smoked a cigarette and we wrote that up. We were finished about 8:00 o’clock.



(Testimony of Hugh Wilton.)

“Then, on the way out of the building, we rapped on a couple of doors and no one was home, and we got into Apartment No. 8 which is one of the units on that floor which has a bath so that we can exchange families, and Mrs. Ortego opened the door, and Mrs. Barney took a good look into the apartment. We then went downstairs and crossed over to the 441 building and we showed Mrs. Barney Apartment No. 14, which is directly above No. 10. It has the same area. It is very nice considering that it is used for small children and by the class of people that pay \$10.00 a week including their light, water and gas, and the fixtures cost \$250, the bath fixtures that I got there, and you can find, when Mrs. Barney was there, you could find children’s fingerprints, sticky fingerprints all over that new light upstairs. Of course, it was too light for those small children, but nevertheless the apartment was well lighted, and before we went to the O.P.A. about this re-registration as a rooming house, we went down to the F.H.A.”

“The Witness: We went into Number 14. She got a look at the Mathews apartment. She got a look at that and that was all the apartments that Mrs. Barney looked at outside of Number 16, and she didn’t look at one of these apartments that we have in the petition. She didn’t look at Number 3, 9, 10, 11 or 3, 4, 9, 10, 11, nor did she look—she did, however, look at Number 16.

The Court: She asked you, and you told her, or



(Testimony of Hugh Wilton.)

gave her the information as to what they consisted of?

The Witness: Yes. I gave her all the information on each of them, I believe.

The Court: She doesn't claim that she went into each one. She says herself that she did not.

The Witness: The only three that I recall she looked at were those three, and then Mrs. Barney told me that it would take her about two weeks to write up that report and I told her it was very important because the attorney wanted it and had asked me to get it without fail for this eviction matter and she said now on account of the holidays that this matter might not come through until after the first of the year, and I haven't been down to the O.P.A. office so far as these people are concerned, so far as that case is concerned, or I haven't seen Mrs. Burns personally or Mrs. Iliff since September 28th and I never heard from them and I assumed the document was all right because I have had other similar operations that never came through from three to six months of the original application. So never got an answer back of any kind for two or three or four months, and it is nothing unusual for any business man to question.

"The registration that I have came back without any stamps on them, your Honor. They have a stamp up here but unless it has one date, it doesn't say whether it is approved or disapproved, and we take it for granted when we don't get a letter, or don't have——

(Testimony of Hugh Wilton.)

Mr. Tolin: Excuse me. I will object to the witness arguing.

The Court: Yes, it is more of an argument than a statement. Did you go back the following day?

The Witness: I never went back the following day. I had no reason for going back. Mrs. Burns and Mrs. Iliff the night before I went down there and stayed there from 3 o'clock until 5 o'clock insisted on getting somebody up there to help me out, and I have not been back to those premises in regard to that matter. I have been down there 50 times since after forms and papers."

I recognize Defendant's Exhibit A, for identification, as the third registration that I rebuilt for Mrs. Burns and it shows in the margin which ones are unfurnished and which ones are not, and which one has a kitchen and a bath, and I showed these to Mrs. Burns which she fully understood. These apartments are available apartments having three doors in the hall, one in the living room, kitchen and one from the hall into the bath, next to the bath. On the second sheet here, there are 67 rooms and under these regulations down there they gave me a form called a continuous sheet, and you will notice in there the rates starting from three persons more per room. This is the form they gave me (referring to Defendant's Exhibit A, for identification). This is the one I filed in a bunch. Mrs. Burns wrote February 1, 1943, the date it was effective. I dated that when I was out of the city.

(Testimony of Hugh Wilton.)

I was working on these at my leisure, and it was dated June 1, 1943, and it was delayed, and I didn't get it delivered until July 15, a couple days after Mrs. Burns came back from her vacation. This is the third time I did it. The February 1 date was put on there about the 15th or 16th of July, 1943. The defendant then offered Defendant's Exhibit A, for identification, in evidence. The Government objected on the ground it related to property other than the property involved in the litigation whereon the following occurred:

"Mr. Taylor: It is in connection with this particular point, your Honor. It has the identical——

The Court: Let me see it.

Mr. Tolin: It says, 'Name of Establishment: 433-435 North Figueroa Street.'

The Witness: That is the proper address legally, the address of the places. In other words, they are merely parts of the building.

Mr. Tolin: This information charges violations at 435 and 441. I don't see how it can be read into that that 433 and 445 are the same address.

Mr. Taylor: Let me see it.

The Court: Of course, this witness' testimony is a department of utter confusion, and perhaps I am caught up in the confusion that results from his words.

Q. By Mr. Taylor: Are those two buildings under the same numbers now that they were before you filed this registration statement?



(Testimony of Hugh Wilton.)

A. Yes. This building is known by the Department of Safety here in the city of Los Angeles as 433 to 445 North Figueroa Street Building. Included in those two numbers are these two in the same building as the number.

The Court: That isn't the point. The apartments involved are the ones which are set forth in this indictment, appearing here.

The Witness: Yes, sir. They are all the premises in that copy, all the units on the premises. They are marked in the margin. I will show you.

"There is number 3 on page one. On page 2 we come down to 6. Excuse me, we skipped 4. 4 is ahead of 3, and number 4 is here. Those are the first 2 and the others are on the next page.

The Court: Well, it is evident that they are mixed up together, and for that reason I will have to admit it, and you will have to straighten it out, if you can.

Mr. Tolin: I will try to.

The Court: The objection is overruled and it may be admitted in evidence as Defendant's Exhibit A.

(The document referred to was marked as Defendant's Exhibit A, and was received in evidence.)

Q. By Mr. Taylor: How many baths are on each floor of each building?

A. There are 2 apartments on each floor that have a private hall and access to the hall. Each has a separate door.



(Testimony of Hugh Wilton.)

The Court: Did you ever take a room from an apartment and rent it to a single person?

The Witness: We rent it to single persons.

The Court: A single room, a part of an apartment?

The Witness: —and we served 6 and 7 people.

The Court: That isn't the point. To be regarded as a rooming house or hotel, you should be able to take a room for yourself, for one person, for the night with the usual accommodations.

“You can pile people on top of one another, but can you separate the apartment so that the Filipino sailor could have one room and an American boy the next one, and I have one room, and all have the proper accommodations? Have you ever done that?

The Witness: Yes.

The Court: That would be the way a rooming house would be.

The Witness: Yes, for families with children, large families—these families come from the Middle West to work in defense, and they have those things in their car and they want beds to sleep their children.

“How are you going to give them beds if you put one person in a room?

“Mr. Shobart asked me to house as many people as I could.

How are you going to house them if you don't give them a bed?

(Testimony of Hugh Wilton.)

Q. By Mr. Taylor: May I ask you, in all those apartments are there connecting doors from one room to another which would enable them to be used either separately or as apartment units?

A. There are eight apartments. They have three doors into the halls, one from the hall that goes into the private bath, one from the living room and one from the kitchen.

The Court: So you could rent the living room to one person, the kitchen to another, and then they could use the bath between them, is that it?

The Witness: The Health Department requires a different bath on each floor.

The Court: My understanding is that a rooming house is just a small hotel, where you could go up, and there would be a bath on the floor to which you could retire when you wanted to. Have you such an arrangement?

The Witness: We have such an arrangement.

The Court: Have you any single room there not in connection with any kitchen to which you might rent to a person who said he wanted a room for the night?

The Witness: Yes.

The Court: Which room?

The Witness: 1 and 5. Neither one have a kitchen.

The Court: Where is their bath? What bath accommodation have they?

The Witness: They have bath, one bath, a private bath.

(Testimony of Hugh Wilton.)

The Court: If you rented it to one man, could he use his bath without going through——

The Witness: Not on No. 1 and 5, but they are not included in the 8 units that I mentioned.

The Court: I see."

As to whether anyone told me that in addition to the filing of these re-registrations I had to file a petition, my answer is that never heard of it. Mrs. Burns told me that after any apartments were re-conditioned and refurnished that we were entitled to registration on the rooming house basis, and that we were entitled to because of the fact that there were only three-quarters of the original people, one-quarter left out of the original 8 units in each building. I never neglected a call from the O.P.A. I wrote or called them immediately when I got any kind of a communication. I have been down there more than any person in this court room has been down there, except the officials or personnel, I have been practically living down there since January 1, 1943.

The premises have been entirely changed since I first entered them along in December, 1942. The company spent \$7,000 on the property for material, labor and furniture. These six units, as well as the other units were all reconditioned, the buildings were reconditioned as to the roof, plumbing, sewer, halls, the apartments were reconditioned and completely furnished. All the furniture was taken out and the floors were painted and linoleum carpeting was put in or rugs, or pieces of linoleum.



(Testimony of Hugh Wilton.)

One of the main objectives was to increase the occupancy and double the amount of beds were put in. The occupancy increased from twelve on March 1, 1942 to twenty-six as of the day of filing the Information and twenty-eight as of today.

We paid the utilities, water, gas and light and the O.P.A. instructed us that we were entitled to, although there was a dispute in that building about it, whether or not we could charge above 55c for the light that we were nevertheless entitled to, and have charged the tenants, and it is included in the price of \$10.00 per week. I have examined the records that I have to determine the difference, if any, in the water bill between March 1, 1942 and March 1, 1944.

“Q. What was the difference?

Mr. Tolin: To which we object on the ground that it is irrelevant and immaterial.

Mr. Taylor: Your Honor, it is a most relevant matter. The complaint charges housing accommodations——

The Court: If you go into this I am going to have to instruct the jury as a matter of law that a person cannot double the number of tenants in an apartment, raise the maximum rent and turn it from an apartment to a rooming house.

Mr. Taylor. Well, I don't think that is the point, your Honor.

The Court: Well, that is his contention. That is his defense, that by doubling up he changed it, and it still remains an apartment and has to be



(Testimony of Hugh Wilton.)

rented as a unit and the price cannot be raised except with the consent of the Office of Price Administration, which it is conceded he has never been given in writing, and no writing appears here.

“You will answer there, of course, that it is a matter to consider that he was led to believe that it was approved. That goes to his good faith, to the question of whether he did it wilfully with knowledge that he had no right to do so. That is why I allowed that to go in.

“However, even though he spent \$10,000.00 and made them as desirable as the Ambassador Hotel, he couldn't raise the rent either by doubling the number of people living there. That doesn't change the classification.

“By the way, did you ever rent to anybody by the day?

The Witness: No.

The Court: Why did you put in your application the amount by the day?

The Witness: Because that is the form and they told me to fill it in.

The Court: In other words, the assumption was that you were running a rooming house and not an apartment house?

The Witness: Yes.

The Court: But, as a matter of fact, if I would say that I wanted a place for one night, you would say, ‘I don't run that kind of a place’?

The Witness: No, your Honor. We never had.

(Testimony of Hugh Wilton.)

The Court: Would you rent to anybody for a day, a single person?

The Witness: Well, we never had that come up.

The Court: Would you have if they had come?

The Witness: No, we couldn't, because we wouldn't have it ready for them for one day, and we couldn't check them in and out.

The Court: All right, just a moment. Your counsel is perfectly capable of trying your case and arguing it for you.

Mr. Taylor: The question was the difference in the amount of the water bill between the two dates, March 1 two years ago, and the present.

The Court: I don't think that is material at all, because there is no charge here, nor is there anything on the receipts showing that he was charging a flat rate. Therefore, the question as to whether at that time it cost him more than before is immaterial.

"You see, there is no receipt showing that that was the reason for raising the price. He has not given that as a reason for raising the price.

Mr. Taylor: I may be in error, but I thought I saw on one of these receipts in evidence a Department of Utilities' bill.

The Court: No. This is the only one which has a fraction of an amount, and the man testified that it was a part of the rent which should have been paid the month before. It was to equalize it.

"I will sustain the objection. It is immaterial whether his utility bill was greater, because his rem-

(Testimony of Hugh Wilton.)

edy was to seek permission to increase the rate by reason of changed conditions, and he doesn't claim to have done so.

The Witness: Your Honor——

The Court: Just a moment. Don't argue the case. Your lawyer is a very competent man to argue your case. You just answer the questions. I am ruling on a question of law here. It is for the jury to determine whether the offense is proven or not. I am just ruling on questions of law." I know Mrs. Mathews who was a witness here yesterday very well. She was twice a witness against me in a hearing held in the District Attorney's office within the last six months. There were two sessions at the District Attorney's office, both in the afternoon, and a hearing before the City Attorney's Deputy in the City Hall. Mrs. Mathews appeared at the City Attorney's office.

There were one or two copies of Defendant's Exhibit A, this one here is our copy. At the time this one was filed by me it was in triplicate and this is the one I had. Mrs. Burns tore the others up. There were two others. There were approximately twenty-five separate registrations but they were later transferred to this one. The twenty-four additional forms were transferred on this one.

"Q. Those marked Exhibits 5 and 4 for the Government? Are those the ones that you are referring to?

A. Yes. When these papers were turned in by me, Mrs. Burns had 3 sections of this in triplicate.



(Testimony of Hugh Wilton.)

Altogether there were 24 copies of original registration agreements. She said they were destroyed, and these agreements took the place of the other ones.

“Now, Mrs. Burns showed me, on November 16, one of the copies—my copy is the red one, or the copy that comes to the landlord, and on that copy was the Examiner’s stamp, and each one has a signature, and it is impossible for these things to be processed and separated——

The Court: The jury is instructed to disregard the last statement as being an argument and not in answer to the question. I want to warn you not to indulge in these kind of answers. You are arguing your case to the jury, which is the province of your lawyer and is not proper for a witness to do.

Q. By Mr. Taylor: Mr. Wilton, were these other 24 or 25 registrations to which you referred, filed one for each rental unit, meaning the apartments?

A. About January 1, 1942, I filed 24, and as of the day Mrs. Burns called that in, I had remaining only 21. There were 3 missing.

Q. But on those other units you had also filed, if I remember your testimony correctly, supplemental and other re-registrations on each apartment.

A. Yes. In every case they were made out in triplicate, starting in May. Then, as there was a new one, Mrs. Burns and I tore them up.

The Court: Did you see her do that?



(Testimony of Hugh Wilton.)

The Witness: Yes.

The Court: Did you say that she did that?

The Witness: Yes. We tore them up as we went along.

The Court: You were there?

The Witness: Yes, when I was with her.

Q. By Mr. Taylor: But those were by apartments instead of by rooms, is that right, the ones that were destroyed?

A. Up to the fourth sheet. From the fourth sheet they were all by rooms. All indicated rooms, and the fourth sheet indicates the kitchen and bath designated to the rooms."

#### Cross Examination

By Mr. Tolin:

"Q. I show you Government's Exhibit No. 6, which appears to be a receipt bearing the date of October 30, 1943, to Mr. and Mrs. Edgar M. Mathews, 441 North Figueroa Street, which shows payment of rent in the amount of \$10.00 for the period of from September 28th to October 5, and the payment of rent in the amount of \$10.00 from October 5th to October 12.

A. Where does it say rent, Mr. Tolin?

Q. Well, it doesn't say. It doesn't use the word "rent," but I am going to ask you now, Mr. Wilton, if this was in fact a receipt for the payment of rent on those dates that I have read to you?

A. No, sir. When Mr. and Mrs. Mathews came in the apartment, they signed a written agreement with me."

(Testimony of Hugh Wilton.)

With respect to Government's Exhibit 6, I am Hugh Wilton, Agent, the signature thereon is my signature. I received the payment in the right-hand corner of that Exhibit and the writing "September 28 to October 5, \$10.00" is my handwriting, and the total "\$20.00" is my hand-writing, and also the part "to: Mr. and Mrs. Edgar M. Mathews" is my hand-writing. That was paid for the utilities, for the furniture, for the reconditioning, etc. of the apartment and it was all set forth in the original agreement, signed agreement by Mr. and Mrs. Mathews. This (indicating Government's Exhibit No. 6) is merely a receipt for the money and has nothing to do with rent. It is for rent and services, the rent is included and also the proportionate share that the Mathews' bore of the \$7,000 that was put into the reconditioning of the property, and also the proper share of the service rendered. Their place was furnished. This is a rent receipt (Government's Exhibit No. 6) including in the total rent all those other items. It is true of these other receipts concerning the other tenant who testified here, meaning Exhibits No. 7, the Hoffmans; Exhibit No. 8, Mr. and Mrs. Yost; Exhibit No. 11, Mr. and Mrs. Bowers; Exhibit No. 9, Mr. and Mrs. Green and Exhibit No. 10, to Mr. and Mrs. Bowers, that he did receive the moneys from those people and that no matter what it says on those Exhibits there is an underlying agreement with those folks and that includes their utilities consumed. Those

(Testimony of Hugh Wilton.)

agreements are written agreement. I haven't one with me.

We spent \$7,000 from December, 1942, on the premises on the sewers, the plumbing, the roof and the reconditioning of the premises, fixing up the incinerators. It took us two months to recondition the building. We had to get a Board of Health permit. The reconditioning included all the buildings between 443 and 445 North Figueroa Street. That includes buildings other than the two we are talking about. There are two other buildings. I do not have any statement showing the breakdown of that expenditure, Mr. Taylor has filed that information with the Office of Price Administration at their request.

“Q. Do you know when?

A. Only generally, within the last——

Q. You weren't there? A. No.

The Court: Let him answer the question. You are asking him the question, and don't you fall in the same error as he falls into, or I will have two of you.

Q. By Mr. Tolin: Who was the owner of the property at the time you registered it, meaning when you registered it by these apparently original registrations, Government's Exhibits 1 and 2?

A. So far as I knew anything about it, I understood that there had been a deed by Mr. Crawford to Mr. Maxfield through some arrangement with the Court.”



(Testimony of Hugh Wilton.)

It appears on the registrations that the name of the landlord is James Maxfield. I understood he had deeded it back to Residential Income Properties, but there was some court matter involved in which Mr. James Maxfield temporarily was the owner. I made out Exhibits No. 1 and 2 pursuant to that information. The signatures thereon are my signatures. The check marks are mine, the rentals written on said Exhibits are in my handwriting, I mailed them into the Office of Price Administration. On September 28, 1943, when I filed these rooming house forms I believe the title had been cleared, in the meantime to Residential Income Properties, Incorporated. I am Secretary of the company. I have no financial interest in the company. I merely act as broker for the corporation.

I did not, during March, 1942, charge the rentals per day that appear on these rooming house forms filed with the Office of Price Administration being Exhibits No. 4 and 5. I have never had any vacancies since that time.

I did not tell that Mr. Shobart advised me to file these rooming house forms. You misunderstood what I said or I didn't say it clearly. Mr. Shobart advised me as to the matter of procedure when I had vacancies in the 443 and 445 building.

"The Court: Did Mr. Shobart tell you that by increasing the number of tenants without changing the apartments from apartments to rooming house



(Testimony of Hugh Wilton.)

units that you could establish a basis upon which the O.P.A. would give you a classification as a rooming house so as to allow you to charge rooming house rates?

The Witness: He gave me the 5 points that could get the rate increased or adjusted by the O.P.A.

The Court: What were they?

The Witness: One, reconditioning of the property, reconditioning of the apartments, the refurnishing of the apartment, the increase of occupancy, and finally utilities which I contend was all utilities, but some of the tenants said that he had gave them the utilities.

"In that case, Mr. Shobart said that that was a matter of settling by prior litigation or by hearing or something, but that we were entitled to charge the tenants for all utilities consumed over and above 55 cents, because they have to have gas, naturally.

The Court: All right, you have told us that before. The question is, you applied for a classification as a rooming house. Who, in the O.P.A. office told you that in view of any of those things you are talking about you could get a classification as a rooming house?

The Witness: Several of them did.

The Court: Who?

The Witness: All of them.

The Court: Including Mr. Shobart?

The Witness: Mr. Shobart told me to come back and apply for re-registration as a rooming house.

(Testimony of Hugh Wilton.)

The Court: After the conditions had been changed?

The Witness: Yes.

The Court: Who told you that you could get a change from an apartment house to a rooming house with the physical structure that you had there? Who is everybody?

The Witness: Mrs. Burns is the one that took the form up and got it approved in the first place.

The Court: You are not answering my question. Did the suggestion come from her that you might get a classification or did you make it?

The Witness: The suggestion came from her.

The Court: That you might get a classification?

The Witness: That I could.

The Court: As a rooming house?

The Witness: Here is the way she explained it in May of 1942. She said, "Mr. Wilton, it is very unusual to get these changes, but we have been hoping to get relief in some instances where buildings are peculiarly situated in hotel sections."

We are only two buildings from a hotel. And she said, 'Where are three-quarters of the tenants—if it wasn't for the fact that three-quarters of the tenants are out, you wouldn't be entitled to it, but where three-quarters of the original tenants as of March 1, 1942, are out of the building, you can go ahead with your registration.'

The Court: Who else told you that besides Mrs. Burns?

(Testimony of Hugh Wilton.)

The Witness: Mrs. Iliff.

The Court: All right. Go ahead.

Q. By Mr. Tolin: Mrs. Burns never told you that you had been granted permission to do that, did she?

A. Mr. Tolin, Mrs. Burns told me that not only on one occasion but on several occasions.

Q. Let's hear it just the way she told it to you.

A. Well, Mr. Tolin, you have a copy there.

Q. Mr. Witness, will you please answer the question. I want to hear it now as you heard it from Mrs. Burns.

A. Will you kindly let me have the copy of that one bill?

Q. I hand you Exhibit A, is that the one you want?

A. Yes, thank you. Now, this Exhibit A——

Q. Mr. Witness, I have just asked you a question.

A. You asked the question.

Mr. Tolin: Will you read the question?

(The question was read.)

The Court: Or do you know exactly the words? There is going to be a conflict here. She has already testified that she never told him any such a thing, and there is testimony on the record that varies. So, it is very important that the jury know what you remember that she said, so that if there is any conflict between her testimony and yours they will know exactly the words that you charge her

(Testimony of Hugh Wilton.)

with and she is not in a position to come back and say she didn't say it any more than you would be in a position to contradict her.

"That is why we have to pin you down as to what she actually said, and not just general statements.

The Witness: Well, your Honor, this petition——

Mr. Tolin: I can see that the answer is not going to be responsive.

The Court: No. You can answer the specific question. You have been in court before. By your manner I can tell, but you haven't evidently learned the rules of evidence. You can't go on and make a speech. In moving pictures they do. They ask a man a question and he gets up and orates, but we can't do that here. Not in American courts, anyway. Let us get back to the question.

The Witness: What was the question?

(The question was read.)

The Court: Put it this way: 'She said to me'.

The Witness: Can I first have the date? He asked me for the date.

Mr. Tolin: You said she told you that just once.

Mr. Taylor: I understood he said she told him that on several occasions.

Mr. Tolin: I will withdraw the question.

Q. By Mr. Tolin: Will you now tell us when Mrs. Burns first made any such statement to you, and after that tell us when, and also tell us what she said.



(Testimony of Hugh Wilton.)

A. On or about July 15, or at least the first interview I had with Mrs. Burns when she returned from her vacation. I went in with this copy and she said, 'Mr. Wilton, this is O.K.'

"I said, 'When is it effective, Mrs. Burns?' and she wrote her—this is her handwriting, 'February 1, 1943,' and that is the date my petition was effective.

"Later on in the conference, Mrs. Burns—am I in line?

The Court: Go ahead. You are not being interrupted.

The Witness: Later on in the afternoon, maybe 30 minutes after she read this up here, she said she was sorry to bother me but she had been up to the legal department and she was up there 20 minutes or so, and she came down and asked me if I would kindly take it back and leave out the third sheet because it had no point at the time which provided for the occupancy of the rooms by 3 or more people.

"In other words, she asked me to leave off the continuing sheet and bring it back, leaving off the margin notes which I suppose had bothered her, which merely shows the——

Q. By Mr. Tolin: Now, please don't tell us about that. We want to know what Mrs. Burns said.

A. She told me this was O.K., and she said that it was effective, that if I would bring it back on the new form, it was effective February 1, 1943, as to

(Testimony of Hugh Wilton.)

rates, and that she wanted it rewritten in a different manner, leaving this off,

Q. When was the next time that she told you anything about it being proper to charge those rates, and if it will help you any to fix dates, I will place before you Government's Exhibits No. 4 and 5. If you need anything else in the Exhibits to help refresh your memory and will ask me, I will bring it up (handing document to the witness.)

A. This is the fifth and final copy. The fourth——

Q. Please answer the question. I placed those before you to assist in refreshing your recollection, but I ask you to tell us now what Mrs. Burns said and when.

“A. When I brought this one in, it wasn't in this form. However, it was correct. This is merely part of it. I brought this petition in in its entirety and handed that to Mrs. Burns. I was there on the morning of September 28th from 9:30 to 11 o'clock. Mrs. Burns was upstairs with the legal department. It was 20 minutes on each call, and she said the form of my petition was O.K. and had been approved in every respect, but she wanted it taken back and cut into five instead of one. This is the fifth or final one, but at 9 o'clock in the morning I had it in one long form like this No. 4 petition.

“So, at 11 o'clock in the morning I left Mrs. Burns' office and came back at 1 o'clock with this petition.

(Testimony of Hugh Wilton.)

Q. Meaning the ones you have in your hand?

A. Yes.

Q. Government's Exhibits No. 4 and 5.

A. Yes. She spent about 15 to 20 minutes checking it with me. She checked back from the other one to see whether the rooms were right and the rates were right, comparing it with the other one."

Mrs. Burns and I checked to see that the figures I had transported on this final form were correct and then she said, "Mr. Wilton, this is O.K. and I will go up to the legal department and get an approval on it."

She went upstairs and was gone 30 minutes and when she came back she then spoke to Mrs. Iliff. Mrs. Burns then said, after after all the time she had been with the O.P.A. it was the first time she knew that she (Mrs. Iliff) had the authority to approve the petition. Mrs. Iliff told me that the petition was approved and that it was effective February 1, 1943. She told me that September 28, 1943 at about 1:15. She told me I was to post these rates up in the rooms and that it was effective February 1, 1943 and had been approved, and that she was very happy about it and congratulated me. Mrs. Burns was the one I really worked with. She told me that it was effective February 1, 1943. As to whether I recall her saying to me that there had to be an inspection and I had to come back the next day and see what the results of the inspection had



(Testimony of Hugh Wilton.)

been, my answer is that that subject had nothing to do with the conversation as I recall. I said now Mrs. Burns when am I operating under this petition. She said, "Mr. Wilton, you are operating under it now and it is effective as of February 1, 1943." And she put her finger on the date. Then she said, "Now this is complete and final, except the examiner has to check the physical work here." And that examination was made later and I on November 16, when I went down there, I saw her signature on there.

That was on September 28. I did not see her the next day. I never thereafter had a conversation with Mrs. Burns in which she told me in substance and effect that I was not permitted to charge the rates as shown on Exhibits 4 and 5. I never heard from the Area Rent Office of O.P.A. to that effect.

#### Redirect Examination

I was never told by anybody that the registration was no good concerning these properties. On November 16 I was asked to go down and get a copy of the registration for an eviction suit. After Mrs. Barney's inspection she told me I could expect it in a couple weeks, possibly after the first of the year. I never heard from her or either from Mrs. Burns until they appeared this morning.

"The Witness: Your Honor, everyone of these tenants in so far as I know, all these people have been there.



(Testimony of Hugh Wilton.)

The Court: They had been there prior to that.

The Witness: Yes.

The Court: When you say you were informed that these rates as shown in this application had been approved, and that all that was needed was some formality to be taken care of later on, did you inform any of these particular tenants or post any notice to the effect that you had been allowed rentals retroactive as of February 1 to charge higher rentals?

The Witness: Yes. I told all these tenants that they were living in a rooming house.

The Court: You told that to the tenants that were living there?

The Witness: Yes, sir.

The Court: Did you tell any of the witnesses, some 5 or 6 of the women who testified here?

The Witness: Well, I have talked to them at one time. I don't recall all the names.

The Court: Well, let's take a list as they appear in the information here.

Count 1: Did you tell that to Mr. and Mrs. Mathews?

The Witness: Yes. I had a conversation with him.

The Court: Did you tell Mr. and Mrs. Hoffman?

The Witness: They were not tenants in that building at that time. They were in the rear building.

The Court: They moved over?

The Witness: Yes.

(Testimony of Hugh Wilton.)

The Court: You told them they were moving into a rooming house?

The Witness: I don't remember the conversation. They moved in and I O.K.'d. them moving in.

The Court: Did you tell them you were charging the new rates?

The Witness: No, I told them I was charging the same rates as I had charged the previous tenant.

The Court: How about Mr. and Mrs. Yost?

The Witness: I have no recollection of telling them.

The Court: How about Mr. and Mrs. Green?

The Witness: They understood they were living in a rooming house.

The Court: How about Mr. and Mrs. Bowers?

The Witness: She knew she was living in a rooming house."

#### Recross Examination

By Mr. Tolin:

"Q. Mr. Wilton, did you charge \$10.00 a week on the apartment that was occupied by Mr. and Mrs. Mathews prior to the day that you filed these Exhibits No. 4 and 5, those rooming house forms?

Mr. Taylor: I feel that that is immaterial.

The Court: Well it may bear as to the intent. He has a right to show charges at or about the time or after. If the word 'wilful' weren't there, the violation would be enough. The objection is overruled.

(Testimony of Hugh Wilton.)

The Witness: Your Honor, on these apartments——

The Court: I am not going to let you start another argument. You will have to answer the question yes or no.

The Witness: Yes.”

I charged \$10.00 a week rent for the apartment occupied by the Hoffmans prior to the time I filed those Exhibits No. 4 and 5, the rooming house forms with the Area Rent Office. I charged \$10.00 a week for the apartment occupied by Mr. and Mrs. Yost prior to the time I filed those same forms. I charged \$10.00 a week for the apartment occupied by Mr. and Mrs. Green prior to the time I filed those forms. I charged \$10.00 a week for the apartment occupied by Mr. and Mrs. Bowers prior to the time I filed those forms.

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### GEORGIA BURNS

recalled as a witness by and on behalf of the plaintiff, having been previously duly sworn, testified as follows:

Referring to Government's Exhibits 4 and 5, I did not have a conversation with the defendant, Hugh Wilton, in the Area Rent Office in which I said to him it was proper for him to charge the rents shown on Exhibits 4 and 5 as of February 1, 1943. The date February 1st on the Exhibit is in my handwriting. That date merely signifies the

(Testimony of Georgia Burns.)

time the registration was first made out like that. This is the date it is registered, the date he started to change his form, but it is not an approved registration. It is not a retroactive date and I did not ever tell the defendant that it was.

I did not on or about September 28, 1943, in the Area Rent Office, in the course of a conversation with the defendant tell him in substance or effect that he could charge the rental shown on Exhibits No. 4 and 5.

I did not tell him anything about whether it had been approved. I don't know exactly what I did tell him. I don't remember that, but I do know that he did understand that it was not up to me to make the decision. I did tell him that. I told him that I would take it to the examining section. I told him that this would have to go through the usual procedure which is that I merely accept the registration and so far as I am concerned, if the registration is correct, I take it to the Examining Section. If that section is not satisfied it orders an inspection and an inspection is made, and the inspector comes back, reports to the examiner and the examiner then reads the form to me and marks a "C" on the left-hand corner which means it is approved completely. Then I stamp the O.P.A. approval stamp on the right-hand corner with the date and I mark the landlord's copy the same way and send him a copy. I told Mr. Wilton that this would have to go through that usual procedure. There was never any approval.



(Testimony of Georgia Burns.)

Cross Examination

By Mr. Taylor:

I don't remember whether I went up to the legal department twice. I have so many of them every month. If there is any question I do go to the legal department. I couldn't positively say whether I did or didn't go to the legal department while Mr. Wilton was waiting. As to whether, because I have so many applications, I can't positively testify as to what conversations I had, my answer is that I remember parts of it, but I don't remember everything.

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WARREN L. SHOBART,

called as a witness by and on behalf of the Government, having been first duly sworn, testified as follows:

I know Mr. Hugh Wilton the defendant. I did not ever have any conversation concerning apartments at 441 North Figueroa Street and at 435 North Figueroa Street. I did have a conversation concerning one apartment.

Referring to my notes I am able to state that it was the apartment at 437½ North Figueroa Street. As to whether Mr. Wilton had numerous properties registered with O.P.A., my answer is I don't know.

"Q. By Mr. Tolin: Did you ever tell Mr. Hugh Wilton, the defendant, that he should re-register or could re-register these properties, 441 and 435 North Figueroa Street as rooming house properties?

(Testimony of Warren L. Shobart.)

Mr. Taylor: Wait a minute. I will object, if the Court please, on the ground that it was not a question of re-registration. That statement wasn't made by any witness on the stand. That is not the testimony, and if this be rebuttal, it should be rebuttal of a question asked.

The Court: What was the question asked? He said Mr. Shobart was the first person that told him that he could do it.

Mr. Taylor: Very well.

The Court: Go ahead and read it. I will ask the categorical questions.

Mr. Taylor: Very well. The witness's statement was that he had gone to Mr. Shobart on or about February 6th of 1943, and had inquired of him concerning the furnishing of apartments.

The Court: Yes.

Mr. Taylor: And that Mr. Shobart had told you that the procedure was to have him refurnish, recondition and refurnish and re-rent at the increased rate and then re-register.

The Court: Let's ask him that. Did you make any such statement to him?

The Witness: I did not. I made a statement which I have a record of.

The Court: Go ahead and tell us what you told him on that occasion.

The Witness: I told him on February 8—this was in connection with 437½.

The Court: The question is here, and they are so interlinked, whether he got the impression from

(Testimony of Warren L. Shobart.)

you that if he made these changes it would be all right.

The Witness: I told him him he would have to petition for an adjustment of rent.

The Court: Yes.

The Witness: I also told him there were 8 grounds. I think I told him the 8 grounds.

The Court: Give us the 8 grounds.

The Witness: One was where there was a lease in effect, one year prior to the maximum rent date. One was where there had been increased occupancy.

“One was where there had been subtenants, and where it had been changed from partially furnished to fully furnished. One was where major capital improvement had been made, and increased services.

“That is about all, six.

The Court: That is enough for the present. What did you tell him would be the technique to follow?

The Witness: That he had to file a petition for an adjustment by the Rent Director.

The Court: Did you ever tell him he could start renting at that rate and get permission later on?

The Witness: I told him his rent was frozen.

The Court: Did you ever tell him that where they were not occupied that when he made these changes that he could start out making a fair increase and then get your approval; that while they were vacant there was nothing on which you could pass?

The Witness: I did not.”



## RAY FORDHAM,

called as a witness by and on behalf of the Government, having been first duly sworn, testified as follows:

During 1943 I was and at the present time am Supervising Rent Examiner of the Los Angeles rental area, O.P.A. During the year 1943, down to the 30th day of December that year I was unable to find any evidence of a petition being filed pertaining to the property 441 North Figueroa Street, the City of Los Angeles. I was unable to find any evidence of such a petition being filed pertaining to that address in the Examining Section of which I have charge. I have seen such a petition relating to that address which was filed in the Enforcement Section on or about March 3 of this year.

My section is the one in which such a petition would be lodged. From the time the Area Rent Office was set up until December, 1943, I was unable to locate any petition in my section referring to 435 North Figueroa Street. These forms are not petitions, they are registrations. When they are not original registrations or registrations involving a change from the registrations which fixes the rental as of March 1, 1942, they are preceded as a part of my office by an application requesting the change and setting forth the grounds. A petition is necessary for any adjustment of rent. Adjustment means change of rent. An original registration would not necessarily require a petition, but if there is an original registration and then an



(Testimony of Ray Fordham.)

adjustment is shown then a petition for the adjustment is necessary. When the petition is approved an order is granted. Then the first registration, if correct, is endorsed with the order of increase and the manager or proprietor is given a copy of that order.

### Cross Examination

By Mr. Taylor:

Housing accommodations after July 1, 1943, do not require a petition to change from the wholly unfurnished to wholly furnished. To change from apartment house to rooming house rates would require a different kind of a petition or consent Rent-Director to operate as a rooming house. The consent to change from housing accommodations to the hotel accommodations would be the first petition. That is merely the consent to operate in a different manner. The maximum rates as and when that change is made, would be established during the month of February, and not particularly on the 1st day of March, 1942, but regardless of the time, the petition is necessary to change the operation from an apartment accommodation to a rooming house or hotel accommodations and the change of rate would also have to be approved.

## ROBERT L. MOORE,

called as a witness by and on behalf of the Government having been first duly sworn, testified as follows:

I am employed by the O.P.A. Rent Division, as rent enforcement attorney.

Referring to the petition that Mr. Fordham testified about and which he said he saw on file in the Enforcement Section, I state that I am familiar with that petition. It was filed during the last few days of February, 1944, after this proceeding was instituted.

## Cross Examination

By Mr. Taylor:

Mr. Taylor, the attorney now questioning was the one who filed it with me and asked me if it was O. K.

Thereupon counsel for the respective parties argued the case to the jury. The Court thereupon instructed the jury and gave the following instructions:

## “INSTRUCTIONS TO THE JURY

The Court: Ladies and gentlemen, I am about to give you the instructions on the law. Before I do so, I may state to you that all the instructions are written. I shall read them as prepared by the Court. The only oral instructions that will be given will be the final instructions at the conclusion of the charge, relating to your conduct in the jury room, and the manner in which a verdict is to be arrived at.

If, after you begin your deliberations, any question arises in your mind as to any part of the instructions, the instructions will be sent to you if you make a request to that effect of the bailiff at the door. You are also entitled to have the exhibits, and while it is not customary to do so, if you desire the information, the information will be sent to you in case you desire to check each particular count in the information against any evidence you may be discussing at the particular time.

The law of the United States permits a judge to comment on the facts in the case. Such comments are mere matters of opinion which the jury may disregard if they conflict with their own conclusions upon the facts. This for the reason that the jurors are the sole and exclusive judges of the facts in each case. However, it is not my custom to exercise this right nor shall I exercise it in the present case. I shall leave the determination of the facts in the case to you, satisfied as I am that you are fully capable of determining them without my aid. However, it is the exclusive province of the Judge of this Court to instruct you as to the law that is applicable to the case in order that you may render a general verdict upon the facts in the case, as determined by you, and the law as given you by the Judge in these instructions. It would be a violation of your duty for you to attempt to determine the law or to base a verdict upon any other view of the law than that given you by the court—a wrong for which the parties would have no remedy, because it is conclu-



(Testimony of Robert L. Moore.)

sively presumed by the court and all higher tribunals that you have acted in accordance with these instructions as you have been sworn to do.

During the course of the trial, I have at various times, asked questions of certain witnesses, including the defendant. My object in so doing was to bring out in greater detail certain of the facts not yet fully testified to by the particular witness. If, from these questions, you have formed the inference that I have an opinion as to the particular facts to which the questions related, it is your right to treat it as an opinion which you are at liberty to disregard in arriving at your own conclusion, as to the particular facts or as to other facts in the case.

You are here for the purpose of trying the issues of fact that are presented by the allegations in the information and the plea of the defendant thereto. This duty you should perform uninfluenced by pity for the defendant or by passion or prejudice on account of the nature of the charge against him. You are to be governed, therefore, solely by the evidence introduced in this trial, and the law as given you by the Court. The law will not permit jurors to be governed by mere sentiment, conjecture, sympathy, passion or prejudice, public opinion or public feeling. Both the public and the defendant have a right to demand, and they do so demand and expect, that you will carefully and dispassionately weigh and consider the evidence and the law of the case and give to each your conscientious judgment; and that



you will reach a verdict that will be just to both sides, regardless of what the consequences may be.

The offense with which the defendant is charged is: Violation of Rent Regulation for housing issued pursuant to the Emergency Price Control Act of 1942.

In this connection, you are instructed that the information on file herein is a mere charge or accusation, against the defendant, and is not any evidence of the defendant's guilt, and no juror in this case should permit himself to be, to any extent, influenced against the defendant because of such information on file.

It is the duty of the jury to decide whether the defendant be guilty or not guilty of the offense charged, considering all the evidence submitted to you in the case.

The jury are the sole and exclusive judges of the effect and value of the evidence addressed to them and of the credibility of the witnesses who have testified in the case, and the character of the witnesses as shown by the evidence, should be taken into consideration, for the purpose of determining their credibility and the fact as to whether they have spoken the truth. And the jury may scrutinize not only the manner of witnesses while on the stand, their relation to the case, if any, but also their degree of intelligence. A witness is presumed to speak the truth. This presumption, however, may be repelled by the manner in which he testified; his interest in the case, if any, or his bias or prejudice, if

any, against one or any of the parties, by the character of his testimony, or by evidence affecting his character for truth and honesty or integrity or by contradictory evidence; and the jury are the exclusive judges of his credibility.

A witness may also be impeached by evidence that he made, at other times, statements inconsistent with his present testimony as to any matter material to the cause on trial; and a witness may also be impeached by proof that he has been convicted of a felony.

A witness false in one part of his or her testimony is to be distrusted in others; that is to say, the jury may reject the whole of the testimony of a witness who has wilfully sworn falsely as to a material point; and the jury, being convinced that a witness has stated what was untrue, not as a result of a mistake or inadvertence, but wilfully and with the design to deceive, must treat all of his other testimony with distrust and suspicion and reject all unless they shall be convinced that notwithstanding the base character of the witness, he or she has in other particulars sworn to the truth.

The law does not require any defendant to prove his innocence, which, in many cases, might be impossible. On the contrary, the law requires the Government to establish his guilt and that by legal evidence and beyond a reasonable doubt.

If you can reconcile the evidence before you upon any reasonable hypothesis consistent with the defendant's innocence, you should do so, and in that case, find the defendant not guilty.

Reasonable doubt is not a mere possible doubt. Because everything relating to human affairs, and depending on moral evidence is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge.

While the defendant in a criminal action is not required to take the stand and testify, yet if he does so, his credibility and the value and effect of his evidence are to be weighed and determined by the same rules as the credibility and effect and value of the evidence of any other witness is determined. And the tests for determining credibility of witnesses as given you in another part of the instructions are to be applied to his testimony alike with that of all other witnesses.

The defendant is here prosecuted for alleged violations of the Emergency Price Control Act of 1942. This law was adopted by the Congress of the United States pursuant to authority given to the Congress of the United States by the Constitution. You are not concerned with its wisdom or unwisdom. It is the law of the land and you must be governed by it in the determination of this case. This law the Congress had the right to pass and it does not violate any of the constitutional rights of any person.

Before you can return a verdict of guilty against



the defendant on any of the counts in the Information, you must be convinced beyond a reasonable doubt that the defendant committed the acts charged in each count.

You will note that it is charged in the information that the acts alleged to be done were done knowingly and wilfully.

Doing or omitting to do a thing knowingly and wilfully implies not only a knowledge of the thing, but a determination with a bad intent to do it or to omit doing it.

When used in a criminal statute, it generally means an act done with a bad purpose. The word is also employed to characterize a thing done without ground for believing it is lawful, or conduct marked by careless disregard whether or not one has the right so to act.

Concerning Count One, you are instructed that if you believe beyond a reasonable doubt that the defendant demanded and received from Mr. and Mrs. Edgar Matthews, or either of them, the sum of \$20.00 as rental for the two-week period commencing on or about September 28, 1943, and that such payment was rental for a housing accommodation at 441 North Figueroa Street in this City, and that the same housing accommodation was actually rented on March 1, 1942 at a lower rental; and that defendant knowingly and wilfully charged a higher rental for the period beginning September 28, 1943, than he knew was charged therefor on March 1, 1942, and that the Area Rent Office had not made



an order authorizing such a higher rental, then you will find him guilty as Charged in count One.

Count Two of the information has been dismissed and you are not to draw any inference of any kind as to Count Two, or from the fact that there was at one time a Count Two in the information.

As to Count Three, if you believe beyond a reasonable doubt that the defendant demanded and received from Mr. and Mrs. Claude W. Hoffman, **or either of them**, the sum of \$20.00 as rental for the two-week period commencing December 15, 1943; and that such payment was rental for a housing accommodation at 440 North Figueroa Street in this city, and that the same housing accommodations was actually rented on March 1, 1942, at a lower rental, and that the defendant knowingly and wilfully charged a higher rental for the period beginning December 1, 1943, than he knew was charged therefor on March 1, 1942, and that the Area Rent Office had not made an order authorizing such a higher rental, then you will find him guilty as charged in Count Three.

Concerning Count Four, if you believe beyond a reasonable doubt that the defendant demanded and received from Mr. and Mrs. H. G. Yost, or either of them, the sum of \$10.00 as rental for one week from December 18, 1943; and that such payment was rental for a housing accommodation at 441 North Figueroa Street in this city, and that the same housing accommodation was actually rented on March 1, 1942, at a lower rental; and that defendant knowingly and wilfully charged a higher

rental for the period beginning December 18, 1943, than he knew was charged therefor on March 1, 1942, and that the Area Rent Office had not made an order authorizing such a higher rental, then you will find him guilty as charged in Count Four.

Concerning Count Five, if you believe beyond a reasonable doubt that defendant demanded and received from Mr. and Mrs. Mike Green, or either of them, the sum of \$10.00 as rental for the one week period commencing on or about December 11, 1943; and that such payment was rental for a housing accommodation at 441 North Figueroa Street in this city, and that the same housing accommodation was actually rented on March 1, 1942, at a lower rental; and that defendant knowingly and wilfully charged a higher rental for the period beginning December 11, 1943, than he knew was charged therefor on March 1, 1942, and that the Area Rent Office had not made an order authorizing such a higher rental, then you will find him guilty as charged in Count Five.

As to Count Six, if you believe beyond a reasonable doubt that defendant demanded and received from Mr. Bower and Mrs. Georgia Bower, or either of them, the sum of \$10.00 as rental for one week commencing on or about December 5, 1943; and that such payment was rental for a housing accommodation at 441 North Figueroa Street in this city, and that the same housing accommodation was actually rented on March 1, 1942, at a lower rental; and that defendant knowingly and wilfully charged a higher rental for the period beginning December

5, 1943, than he knew was charged therefor on March 1, 1942, and that the Area Rent Office had not made an order authorizing such a higher rental, then you will find him guilty as charged in Count Six.

Concerning Count Seven, if you believe beyond a reasonable doubt that the defendant demanded and received from Mrs. Georgia Bower the sum of \$10.000 as rental for a one-week period beginning December 12, 1943; and that such payment was rental for a housing accommodation at 441 North Figueroa Street in this city, and that the same housing accommodation was actually rented on March 1, 1942, at a lower rental; and that defendant knowingly and wilfully charged a higher rental for the period beginning December 12, 1943, than he knew was charged therefor on March 1, 1942, and that the Area Rent Office had not made an order authorizing such a higher rental, then you will find him guilty as charged in Count Seven.

However, if you have a reasonable doubt as herein defined, that the defendant did wilfully and knowingly do any of the acts charged in any of the counts enumerated, you will acquit him as to each of such counts as to which you have such doubt.

At all times pertinent to this case, it was the duty of a landlord desiring to raise the rental of housing accommodations in Los Angeles County, to file a petition for permission to do so with the Area Rent Office of the Office of Price Administration and to await the approval of that authority



before accepting any rental for a housing accommodation at a rate higher than that charged for the same housing accommodation on March 1, 1942.

Neither expenditures for remodeling nor the addition of furniture would warrant the defendant in raising the rent above the March 1, 1942, rate. If he made such expenditures or changes which then entitled him to added rental, his remedy was to secure the approval of the change from the Office of Price Administration before asking or receiving additional rent.

Nor could he without approval of the Office of Price Administration, by merely increasing the number of occupants change the nature of the establishments from apartment houses to rooming houses and charge rooming house rates.

If without such approval, the defendant knowingly and wilfully charged the higher rentals as alleged in any of the counts of the information, then he is guilty of the charge in the particular count of the information, even though you should be convinced that he actually made the changes or incurred the expenditures.

Your first duty upon retiring to the jury room to begin your deliberations in this case will be to select one of your number to act as Foreman. For your assistance, the clerk has prepared a form of verdict which reads:

"Title of the Court and Cause, No. 162,152—  
Criminal.



United States of America against Hugh Wilton,  
Defendant.

Verdict.

We, the jury, in the above entitled case, find the defendant, Hugh Wilton, blank as charged in Count One of the Information, blank as charged in Count Three of the Information, blank as charged in Count Four of the Information, blank as charged in Count Five of the Information, blank as charged in Count Six of the Information, and blank as charged in Count Seven of the Information.

Dated: Los Angeles, California, blank, 1944.

Blank, Foreman of the Jury."

In the Federal Court, the jury is required to return a unanimous verdict in both Civil and Criminal cases. This differs from State Court where 9 may return a verdict. All of you must agree upon a verdict before a verdict may be returned as to any of the Counts of the Information.

If you find the defendant guilty as charged in Count One of the Information, you will insert the word 'guilty'. If you find not guilty, you will insert the words 'not guilty,' and that applies to Count Three and to the other Counts of the Information.

While it is necessary that you all agree on the verdict, it is not necessary that you find the same verdict on each Count. You are free to find whatever verdict you desire as to every one of the Counts in the Information. However, you must find a verdict as to each Count remaining in the Information before you can bring in a verdict, un-

less the Court, upon proper showing, should agree to accept a verdict on less than all the Counts in the Information.

I am going into a great deal of detail here because gentlemen, this is your first session with me, and I don't know how elaborately the other Judges may have instructed you.

When your verdict is completed, it must be dated and signed by your Foreman, and by 'foreman' I mean 'forewoman' too, but 'forewoman' doesn't sound right. Foreman is a proper word. It must be signed by your Foreman and returned to the court room.

Are there any exceptions to the charge?

Mr. Taylor: May I ask that your Honor clarify the instructions given on the individual Counts? I am referring now to Count Number Five in the Government's instructions.

The Court: What do you want me to do? Merely summarize?

Mr. Taylor: This is the point, that they be the same housing accommodations, and I think the Court should elaborate the word 'same.'

The Court: That is an argument. The word 'same' is repeated. It is said repeatedly that the 'same housing accommodation was actually rented on March 1, 1942, at a lower rental.'

I have already explained to the jury how, when there are changes, that actually can be done. I can't give you an argument because I have avoided assiduously making any comments and I have given the reverse of it by stating if they have any doubt

as to any of the facts charged that the verdict must be not guilty.

Ordinarily I do not give an elaborate summary of the evidence, but in a case of this character you can't avoid doing it, but the wording is identical so that the jury will understand they have to find as to each of them on all the facts which are recited and that if any of the facts are not proved, or they have a reasonable doubt as to any of them, it is their duty to acquit.

Mr. Taylor: No other exceptions.

The Court: I think the jury understands the matter. I may say, gentlemen, you perhaps have learned by now in the Federal Court it is provided that either side may call the attention of the Court to any particular instructions or make suggestions, even, to instructions so the Court may if it so desires, make a correction. Courts are human, and at times they may overlook something. This is the only place where counsel can except to instructions and later on claim an error in the Court's instructions.

So, the instructions will remain as I have given them to you, and I think you understand the statement that I made in response to Mr. Taylor. It was merely a summary of what I had given you in greater detail in the instructions."

The Jury thereupon retired to deliberate on the case. Thereafter the Jury returned into Court with the following verdict:

"United States District Court, Southern District of California, Central Division.



United States of America, Plaintiff, vs. Hugh Wilton, Defendant, No. 16512 Criminal.

Verdict.

We, the Jury in the above entitled Case, find the defendant, Hugh Wilton, guilty as charged in Count One, guilty as charged in Count Three, guilty as charged in Count Four, guilty as charged in Count Five, guilty as charged in Count Six, and guilty as charged in Count Seven.

Dated, Los Angeles, California, March 15, 1944.

H. K. Bagley, Foreman of the Jury."

The Court: So say all of you?

Thereupon the Jury was excused.

The Court thereupon ordered the time for judgment be continued to April 3, 1944, and at said time, sentenced the defendant as follows:

Defendant was sentenced to ninety days in jail on Count One; a fine of \$500.00 on Count Three; a fine of \$500.00 on Count Four, a fine of \$500.00 on Count Five, Six and Seven, and it was provided that the payment of \$500.00 would satisfy all fines on each and every count save Count One.

A notice of appeal was filed and defendant released on his own *reconnaissance*, upon deposit of the sum of \$500.00 with the Clerk of the Court.

### ASSIGNMENTS OF ERROR

The defendant assigns the following as error:

#### I.

The Court erred in denying the motion that the information be dismissed and the defendant discharged.



## II.

The Court erred in sustaining the objection to the following question: "Q. And then after that inventory was made can you tell me whether Figueroa Street, upon which these properties abutted, was widened?"

## III.

The Court erred in sustaining the objection to the following question: "Q. Now then, approximately what was the date, as near as you can recall, when the front of the building was taken off in the widening of Figueroa Street?"

## IV.

The Court erred in sustaining the objection to the following question: "Q. What were your instructions, if any?"

## V.

The Court erred in sustaining the objection to the following question: "Q. What was the difference?"

## VI.

The Court erred in making the following statement in the presence of the Jury: "That brings in an inquiry as to the reasonableness of the rental, and that is not the subject of the inquiry in this particular case. We are not sitting here reviewing the acts of the board.

Furthermore, it is apparent that at the time of the violation that is charged here, he had long been discharged."

## VII.

The Court erred in making the following statement in the presence of the jury:

"The Court: There is only one question involved here. The property was registered at a certain rental prior to the date. The question is whether there was more charged than that, and that is all there is in this lawsuit. The mere fact that he rented it too cheaply, he is just out of luck."

## VIII.

The Court erred in making the following statement in the presence of the Jury:

"The Court: Well, he couldn't rent cheaply. His remedy is to apply to the board for a reclassification in the light of the conditions, but you couldn't, in this case, show that the O.P.A. made a mistake in freezing this man's rent as of March 1st because the rentals were too low.

Good Lord, there isn't a landlord in town that wouldn't make that sort of argument, and there isn't anyone who doesn't feel it. We are not in a position to do that in this lawsuit."

## IX.

The Court erred in making the following statement in the presence of the Jury:

"The question is, is it a valid regulation, and was it violated, and that is all there is to this lawsuit, or to any lawsuit involving the O.P.A. We try them all. We have tried gasoline coupons and all sorts of things. We didn't try to determine

whether they ought to have only so many gas coupons, so many gallons of gas, on each coupon, or whether they were right in limiting persons to it because if we did, why, we would enter a field in which the Congress has not allowed us to enter."

### X.

The Court erred in making the following statement in the presence of the Jury:

"Yes, it is more of an argument than a statement. Did you go back the following day?"

### XI.

The Court erred in making the following statement in the presence of the Jury:

"The Court: That isn't the point. To be regarded as a rooming house or hotel, you should be able to take a room for yourself, for one person, for the night with the usual accommodations.

You can pile people on top of one another, but can you separate the apartment so that the Filipino sailor could have one room and an American boy the next one, and I have one room, and all have the proper accommodations? Have you ever done that?"

### XII.

The Court erred in making the following statement in the presence of the Jury:

"The Court: If you go into this I am going to have to instruct the jury as a matter of law that a person cannot double the number of tenants in an apartment, raise the maximum rent and turn it from an apartment to a rooming house."

## XIII.

The Court erred in making the following statement in the presence of the Jury:

"The Court: Well, that is his contention. That is his defense, that by doubling up he changed it, and it still remains an apartment and has to be rented as a unit and the price cannot be raised except with the consent of the Office of Price Administration, which it is conceded he has never been given in writing, and no writing appears here.

You will answer there, of course, that it is a matter to consider that he was led to believe that it was approved. That goes to his good faith, to the question of whether he did it wilfully with knowledge that he had no right to do so. That is why I allowed that to go in.

However, even though he spent \$10,000.00 and made them as desirable as the Ambassador Hotel, he couldn't raise the rent either by doubling the number of people living there. That doesn't change the classification."

## XIV.

The Court erred in making the following statement in the presence of the Jury:

"The Court: Just a moment. Don't argue the case. Your lawyer is a very competent man to argue your case. You just answer the questions. I am ruling on a question of law here. It is for the jury to determine whether the offense is proven or not. I am just ruling on questions of law."



## XV.

The Court erred in making the following statement in the presence of the Jury:

“The Court: The jury is instructed to disregard the last statement as being an argument and not in answer to the question. I want to warn you not to indulge in these kind of answers. You are arguing your case to the jury, which is the province of your lawyer and is not proper for a witness to do.”

## XVI.

The Court erred in making the following statement in the presence of the Jury:

“Let him answer the question. You are asking him the question. Don’t you fall into the same error he falls into or I will have two of you.”

## XVII.

The Court erred in making the following statement in the presence of the Jury:

“The Court: No. You can answer the specific question. You have been in court before. By your manner I can tell, but you haven’t evidently learned the rules of evidence. You can’t go on and make a speech. In moving pictures they do. They ask a man a question and he gets up and orates, but we can’t do that here. Not in American courts, anyway.”

## XVIII.

The Court erred in making the following statement in the presence of the Jury:

“The Court: As I said, I am going to instruct

the jury as I have already said that he could not, by making expenditures of money, without the approval of the O.P.A. raise the rent.

In other words, before any rent is raised, a man must make representations to entitle him to a different classification. He can't say, 'I spent so much money and therefore I want more rent,' because that is a violation not of the O.P.A. regulations themselves. It is a violation of the Price Regulation Act because, gentlemen, as I will instruct you, the function of the O.P.A. and the power is given by the Government of the United States which has established this body to regulate prices and merely gives the O.P.A. the right to fill in the details.

Congress does not and could not say that anybody violating the regulations shall be guilty of an offense. All the O.P.A. does is carry out the intent of Congress in the Emergency Price Control Act of 1942, and applies to the control of all prices.

All the rationing that is done, the rationing of food, gasoline, and limitations of freezing the wages, rents and prices are done under this one authorization of the Congress, and the Office of Price Administration is merely one of the instrumentalities by which Congress authorizes this done. You want to get away from the idea that the O.P.A. is doing these things. It is the Congress of the United States which means the people of the United States, and these are merely details in carrying out the intent of the Congress."

## XIX.

The Court erred in making the following statement in the presence of the Jury:

“I am not going to let you start another argument. You will have to answer the question yes or no.”

## XX.

The Court erred in making the following statement in the presence of the Jury:

“The Court: Of course, this witness’ testimony is a department of utter confusion, and perhaps I am caught up in the confusion that results from his words.”

## XXI.

The Court erred in admitting each and every exhibit which was admitted in evidence.

## XXII.

The Court erred in giving instructions to the Jury.

## XXIII.

That the evidence was and is insufficient to sustain a conviction of the defendant as to each and every count of the amended information.

## XXIV.

That the evidence was and is insufficient to prove any criminal intent on the part of the defendant.

The Trial Court having, at proper time, duly extended the time of defendant within which to prepare, serve, have settled and file his bill of exceptions and assignments of error, and said time bay-

ing been further extended by an order of the United States Circuit Court of Appeal for the Ninth Circuit to and including November 1, 1944, within which to serve and file his proposed bill of exceptions, appellee to have to and including November 10, 1944, to file amendments, and that said bill of exceptions be settled on or before November 18, 1944, upon the stipulation of the parties hereto, through their respective attorneys, the Court hereby settles and allows the foregoing, together with the original exhibits on file, as the bill of exceptions herein.

Done in open Court this 24th day of November, 1944.

LEON R. YANKWICH

District Judge.

#### STIPULATION FOR SETTLEMENT OF THE BILL OF EXCEPTIONS

It Is Hereby Stipulated and Agreed by and between the parties to the above entitled action, through their respective attorneys, that the foregoing, together with the original exhibits on file in said action, may be approved, settled and allowed by the above entitled Court as the bill of exceptions of defendant and appellant on appeal, and that said bill of exceptions contains all of the evidence material and pertinent to a consideration of each and every assignment of error asserted and contended for by defendant and appellant.



Dated this 23rd day of November 1944.

CHARLES H. CARR,  
United States Attorney,

By ERNEST A. TOLIN,  
Deputy United States Attor-  
ney.

Attorneys for Plaintiff and  
Respondent.

PAUL TAYLOR and JOSEPH  
P. GUERIN,

Attorneys for Defendant and  
Appellant.

[Endorsed]: Lodged Nov. 1, 1944.

[Endorsed]: Filed Nov. 24, 1944.

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[Endorsed]: No. 10740. United States Circuit Court of Appeals for the Ninth Circuit. Hugh Wilton, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed December 27, 1944.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.



No. 10740

IN THE

United States Circuit Court of Appeals  
FOR THE NINTH CIRCUIT

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HUGH WILTON,

*Appellant,*

*vs.*

UNITED STATES OF AMERICA,

*Appellee.*

---

APPELLANT'S OPENING BRIEF.

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PAUL TAYLOR,

930 Bartlett Building, Los Angeles 14,

*Counsel for Defendant.*

JOSEPH D. TAYLOR,

ELLWOOD W. KEMP, JR.

*Of Counsel.*

FILED

APR 17 1945

PAUL P. O'BRIEN,  
CLERK





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No. 10740

IN THE

# United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

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HUGH WILTON,

*Appellant,*

*vs.*

UNITED STATES OF AMERICA,

*Appellee.*

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## APPELLANT'S OPENING BRIEF.

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### Introductory Statement Concerning Questions Involved.

This is an appeal from a judgment of conviction under six counts of an Information which charged a violation of a Rent Regulation for Housing. The defendant was sentenced to a fine of \$500.00 and to 90 days in jail on Count 1. The case was tried before the Honorable Leon R. Yankwich and a jury.

Each count of the Information was similar in charging that the defendant for a certain period of time in the latter part of 1943, knowingly, *wilfully* and unlawfully received rent for housing accommodations consisting of an apartment described only by number and street address within the Los Angeles Defense Rental Area, which apartment unit at the times mentioned had a maximum rent less than the amount received under "Rent Regulation for

Housing (8 Fed. Reg. 7322), issued by the Administrator of the Office of Price Administration, pursuant to Section 2 of the Emergency Price Control Act of 1942."

The conviction was under the following counts:

**Count 1**, which charged the receipt from Mr. and Mrs. Edgar M. Mathews of rent in the amount of \$20.00 as *two weeks* rent for the period September 28th to October 12th, 1943, for the housing accommodations consisting of **apartment 16** in the apartment building at 441 North Figueroa Street, Los Angeles, California, which apartment unit at all times mentioned had a maximum rent for said period of \$8.00 under the above mentioned rent regulations.

**Count 3**, which charged the receipt from Mr. and Mrs. Claude W. Hoffman of rent in the amount of \$20.00 as *two weeks* rent for the period December 1st to December 15th, 1943, for the housing accommodations consisting of **apartment 10** at 44 North Figueroa Street, Los Angeles, California, which apartment unit at all times mentioned had a maximum rent for said period of \$10.00 under the above mentioned rent regulations.

**Count 4**, which charged the receipt from Mr. and Mrs. H. G. Yost of rent in the amount of \$20.00 as *two weeks* rent for the period December 18th to December 25th, 1943, for the housing accommodations consisting of **apartment 11**, at 441 North Figueroa Street, Los Angeles, California, which apartment unit at all times mentioned had a maximum rent for said period of \$4.50 under the above mentioned rent regulations.

**Count 5**, which charged the receipt from Mr. and Mrs. Mike Green in the amount of \$10.00 as *one week's* rent for the period from Dec. 11, 1943, to Dec. 18, 1943, for



the housing accommodations consisting of **apartment 3** at 435 North Figueroa Street, Los Angeles, California, which apartment unit at all times mentioned had a maximum rent for said period of \$3.75 under the above mentioned rent regulations.

**Count 6**, which charged the receipt from Mr. John Doe Bower and Mrs. Georgia Bower in the amount of \$10.00 as *one week's* rent for the period December 5th to December 12th, 1943, for the housing accommodations consisting of **apartment 4**, at 435 North Figueroa Street, Los Angeles, California, which apartment unit at all times mentioned had a maximum rent for said period of \$4.38 under the above mentioned rent regulations.

**Count 7**, which charged the receipt from Mr. John Doe Bower and Mrs. Georgia Bower in the amount of \$10.00 as *one week's* rent for the period December 12th to December 19th, 1943, for the housing accommodations consisting of **apartment 4**, at 435 North Figueroa Street, Los Angeles, California, which apartment unit at all times mentioned had a maximum rent for said period of \$4.38 under the above mentioned rent regulations.

The particular rent regulation which these counts charge was violated is not otherwise described in the Information than by the parenthetical references to the Federal Register, and no evidence was offered as to the provisions of the regulation, its manner of issuance, or the length of time after issuance it was in force.

The regulation itself was not introduced in evidence, nor was the jury informed as to its provisions.

An examination of 8 Fed. Reg. page 7334 will show that a Rent Regulation for Hotels and Rooming Houses

was published on the same day as the regulation referred to in the information.

An examination of the Rent Regulation for Housing, 8 Fed. Reg. 7322, Section 1(b) "Housing to which this regulation does not apply," subdivision 3, which reads, "Rooms or other housing accommodations within hotels or rooming houses or housing accommodations which have been *with the consent* of the administrator brought under the control of the rent regulation for hotels and rooming houses pursuant to the provisions of that regulation" would seem to indicate the necessity, in connection with property such as the one here involved, of proof that the consent of the administrator to bring the property under the Rent Regulation for Hotels and Rooming Houses had not been given. No such evidence, however, was introduced.

An examination of the last mentioned regulation applying to rooming houses, Schedule A shows that the date by which the registration statement was required to be filed was December 16th, 1942. The effective date of the regulation was November 1st, 1942, and the maximum rent date, March 1st, 1942. These dates are the same as those provided in the rent regulation for housing.

Although the jury was not advised, nor did the trial court consider the subject, Section 5 of the regulation for housing provides that the administrator may change maximum rents under circumstances which are enumerated. The adjustment, according to this section, shall be the amount the administrator finds to have been, on the maximum rent date, the difference in the rental value of the housing accommodations by reason of the change.

The circumstances under which the administrator is required to make a change, as provided in this section, are

- (1) In those cases involving a major capital improvement;
- (2) An increase or decrease in the furniture, furnishings or equipment;
- (3) An increase or decrease of service;
- (4) An increase or decrease in the number of sub-tenants or other occupants.

Section 5 further provides that the adjustment shall be on the basis of the rent which the administrator finds was generally prevalent in the defense rental area on comparable housing accommodations on the maximum rent date. Although under paragraph (a) of Section 5 the landlord is given the privilege of filing a petition for adjustment by way of increase in the maximum rent, *there is nothing in the regulation which prevents the administrator from consenting to an adjustment without a petition.* This subject becomes of great importance in connection with certain comments of the court made during the trial of this case.

The statute under which the regulation is alleged by the government to have been issued is not a statute which penalizes conduct which violates the regulation, unless the violation is wilful.

Section 2 of 56 Stat. 23, paragraph (b) provides that whenever in the judgment of the administrator, in order to effectuate the purposes of the act, it is necessary, the administrator shall issue a declaration setting forth the necessity for, and the recommendation with reference to the stabilization of rents for a defense area; that if within



sixty days rents within the defense area have not been stabilized in accordance with the recommendations, the administrator may then by regulation or order establish such maximum rent or rents for such accommodations as in his judgment will be generally fair and equitable. By paragraph (c) the administrator is given a broad discretion as to the form and manner of any regulation.

Section 4 provides that it shall be unlawful to demand or receive any rent for any defense area housing accommodations in *violation of any order or regulation under* Section 2 or of any price schedule effective in accordance with the provisions of Section 206 or any regulation under Section 202(b) or 205(f).

Section 206 refers to schedules established prior to the date under which the price administrator took office.

Section 202(b) has reference to regulations requiring the furnishing of information and the keeping of records.

Section 205(f) is a part of the statute entitled "Enforcement" and makes provision for certain regulations where licenses are required.

Under this title of "Enforcement" Section 205 provides in paragraph (a) for the issuance of an injunction and in paragraph (b) that any person who wilfully violates any provision of Section 4 of the act (which is the section stating certain acts are unlawful) and is placed under a general heading "Prohibitions," shall upon conviction be subject to a fine of not more than \$5,000.00 nor to imprisonment of not more than 2 years in the case of a violation of Section 4(c) violation by officials and for not more than one year in all other cases, or to both such fine and imprisonment.



The fine in this case evidently was imposed under Section 205, paragraph 6.

Paragraph (d) of Section 205 provides:

"No person shall be held liable for damages or penalties in any Federal, State or Territorial court on any grounds for or in respect of anything done or admitted to be done in *good faith* pursuant to any provisions of this act or any regulations, order, price schedule requirement or agreement thereunder or under any price schedule of the Administrator of the Office of Price Administration or of the Administrator of the Office of Price Administrator and Civilian Supply, notwithstanding that subsequently such provisions, regulation, order, price schedule requirement or agreement may be modified, rescinded or determined to be invalid." (Italics ours.)

We have referred to these various provisions of the act to show how interrelated, how complicated and how technical they are, for which reason, no doubt, it is the clear intent of the statute not to punish a violation unless the violation was in bad faith. In short, it will be our contention that evidence of attempted compliance with the provisions of the act showing good faith, is sufficient to prevent a conviction. The government must very definitely prove the violation was wilful before the conviction can be upheld. Charges for accommodations made in this case were not in violation of the Regulation for Hotels and Rooming Houses (if there was any violation at all) and the number of forms filed with the Office of Price Administration and apparently accepted by that office and the number of conferences there together with

the stamp on the registration filed under the other regulation "*Must Be Registered Again*" (Exhibits 1 and 2) is evidence of good faith. The instructions to the jury did not give the defendant the benefit of this provision.

We shall show:

1. Prejudicial error in instructions which did not state the law which governs this case.
2. The evidence does not support the conviction.

### The Evidence.

The government called a former manager, Madge Bentley, who testified that the rental on apartment 16 (Count 1) on March 1st, 1942, was \$16.00 *per month* and that at the time the apartment was unfurnished [R. p. 52]; that the rental on apartment 10 (Count 3) on the 1st day of March, 1942, was \$20.00 *per month*. "It was partially furnished, I believe." That the rental on apartment 11 (Count 4) on the 1st day of March, 1942, was \$18.00 *per month*; it was partially furnished. That the rental on apartment 4 (Counts 6 and 7) on the 1st day of March, 1942, was \$17.50 *a month*; it was rented furnished. That the rental on apartment 3 (Count 5) on March 1, 1942, was \$15.00 *a month*; it was partly furnished.

While this witness was testifying the court unnecessarily and outside of the issues brought out to the prejudice of the defendant that the apartment was in a working persons' neighborhood and accommodated the poorer class of people [R. p. 54].

That in apartment 10 there were perhaps a table, a dresser and a kitchen chair; that in apartment 11 there were a dresser, a dressing table, a table and two chairs; that in apartment 3 there were a couple of dressers, just

a small amount of furniture; in apartment 4 there were a chair, table, dresser, bed, stove and curtains.

This witness did not describe the number of rooms in the respective apartments *nor did this witness give any evidence to show that the apartments referred to by this witness were the same* as to their rooming accommodations with the apartments for which witnesses testified they paid rent in excess of the maximum.

In support of the receipt of payments of rent in excess of the maximum, the government offered the following testimony:

As to Count 1, Mrs. Mathews testified [R. pp. 57-60] that she lived in apartment 16 and that she paid \$20.00 to Mr. Wilton referred to in the government's Exhibit 6 which is a receipt for \$20.00 but does not show the application of the payment, i.e., whether it was for rent or something else. She testified that she *supposed* this payment was for rent. "Our rent was paid way in the future at that time." "I paid the money to apply as rent on the place." "When I took the apartment I was told that the rent was \$10.00. There were a few pieces of furniture. A bed, a chair or two, a table and a broken down case. There were two rooms with the kitchen and bath. One sleeping room. [R. p. 57.]

On cross-examination this witness testified she did not have to pay any rent; that she did not owe Mr. Wilton any rent and she couldn't say what the last rent paid was [R. p. 59]. She also testified that when she moved in there was a dresser and there were three dressers when she left [R. p. 60].

Assuming that the evidence showed that the maximum rental for the apartment occupied by Mrs. Mathews was



\$8.00 for the two weeks, Sept. 28th, 1943, to Oct. 12th, 1943, as charged in the information, this witness did not testify that the \$20.00 which she paid to Mr. Wilton was for the period of time, Sept. 28th, 1943, to Oct. 12, 1943, or for any two weeks' period. According to this witness the sum of twenty dollars was paid "to apply as rent on the place," and as a result of the payment "Our rent was paid way in the future *at that time.*"

There is in connection with Count 1, as well as in connection with all the other counts, the question whether a monthly rental on March 1, 1942, establishes a maximum rental of the same accommodations when rented semi-monthly or on a weekly basis.

Furthermore, as to apartment 16 we are left entirely without evidence as to whether this apartment when rented on March 1, 1942, had the same number of rooms as when rented to Mrs. Mathews. The rent on March 1, 1942, according to Madge Bentley was for an unfurnished apartment, but the rent, regardless of the period of time covered, as paid by Mrs. Mathews was for a furnished apartment. This was not the same housing accommodations as rented on March 1, 1942.

As to Count 3, Claude W. Hoffman testified that he lived in apartment 10 with a wife and two children. The apartment had a kitchen, dining room, bedroom and bath; that the government's Exhibit 7 for a total of \$25.05 included two items of \$10.00 each respectively for rent from December 1st to December 8th, 1943, and from December 8th to December 15th, 1943; that the apartment was partially furnished; that the amount of \$23.21 included the rent referred to and moving charge of \$3.21, paid to Mr. Wilton. He did not explain the item of \$1.84 for gas.



The government's Exhibit 7 shows the following:

"Rate O. P. A. Reg. 4 people \$10.50. Gas & Elect. will be paid by tenant above Min. 1.35 Rental Agreement to be signed later."

As to Count 4 Mrs. Mary Yost testified that she lived at apartment 14, with her husband and *three children*, the apartment consisting of a living room, dining room, bath and kitchen and two in-a-door beds and that she occupied this apartment in December, 1943; that Mr. Wilton in a certain conversation said he was "charging \$10.00 a week for the rooms or for the apartment which wasn't wholly furnished." [R. p. 63.]

With reference to the government's Exhibit 8, which does not designate what apartment the receipt covers, this witness testified that she paid the week's rent shown in the receipt for apartment No. 12. There is *no evidence* that the defendant received more than the maximum rent for apartment 11. This witness did not mention apartment 11.

As to Count 5 Mrs. Louise Green testified that she lived at 435 North Figueroa Street for the period from December 11th to December 18th, 1943; she did not designate the apartment in which she lived and for which she paid rent either by number or by description, except that it consisted of a living room, dining room, bathroom and kitchen and two wall beds. Whether the rent paid by Mrs. Green was for apartment #3 during the period in which it is charged more than the maximum rent was paid is left wholly to conjecture. The government's receipt Exhibit 9 for \$15.00 does not indicate the apartment covered by the receipt. Mrs. Green testified she paid rent to Mr. Wilton of \$10.00 a week. She was not even certain of this for she also said

"I don't know whether I paid it to Mr. Wilton or to Mr. Fenkell." Mr. Fenkell was never identified.

Counts 6 and 7 are for amounts received from Mr. and Mrs. Bowers in excess of the maximum for apartment 4 covering respectively the periods December 5th to December 12th, and December 12th to December 19th, 1943. Mrs. Georgia Bowers testified that she lived with her husband and *two children* at 435 North Figueroa, and that the apartment consisted of two rooms, bath and kitchen; that the apartment had a kitchen, a living room and a bedroom; that Mr. Wilton told her the rent was \$10.00 a week, which she paid. She testified Exhibit 10 was a rent receipt and that she paid the amount shown by the receipt. Exhibit 11 was another rent receipt but these receipts covered rents from December 5th to December 19th, 1943; that she had some furniture in the kitchen and in the living room. This witness did not testify as to the particular apartment for which the rent was paid.

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In addition to the foregoing testimony, the government called Gladys Iliff, an employee of the Office of Price Administration, who was the supervisor of registration in rent control, employed there since November, 1942, and who had charge of the files in the area rent office. This witness identified government's Exhibits 1 and 2 for identification, which were subsequently admitted.

These exhibits consist of six registrations of the apartments. At best they only indicate the maximum rent was as testified to by Madge Bentley, namely apartment 16 (Count 1) \$16.00 per month; apartment 10 (Count 3) \$20.00 per month; apartment 11 (Count 4) \$18.00 per

month; apartment 4 (Count 6) \$17.50 per month; apartment 3 (Count 5) \$15.00 per month. The rent on any basis other than a monthly basis is not indicated. The number of rooms in each apartment is not indicated.

On cross-examination Mrs. Iliff was asked to explain the stamp on Exhibits 1 and 2 as to re-registration. Her testimony was contradictory and confusing. She did not know who put the stamp there. She said, "At some time and place there was a re-registration of some sort. It was brought before me for approval and it was not granted." She told of an investigation apparently following the filing of registration forms under the Regulation for Hotels, etc.

Georgia Burns was called by the government. She testified that in September, 1943, she received from the defendant a form with respect to "A proposal to register certain property as a rooming house." She identified and there was introduced in evidence, government's Exhibits 4 and 5. These exhibits are in the form apparently adopted for hotels and rooming houses under the Regulations with reference to the same found in 8 Fed. Reg. page 7334. The rates for the rooms referred to depend in part upon the number of persons occupying the same. Rooms 21, 24, 25, 29, 30, 34-37, 39 and 40 are listed on Exhibit 4 and rooms 1-6, 8, 9, 11 and 19 on Exhibit 5.

This witness testified there was a *great deal* of conversation with Mr. Wilton because "these apartments" were originally listed under the apartment form. Mr. Wilton said, according to this witness, that he had decided to break up the flats which had been occupied by only one family and he intended to make them available for five or six families by renting out rooms. He discussed the forms which he should use [R. p. 67]. This



witness said that government's Exhibits 4 and 5 were filled out *and some other forms like them*. She said "He registered them with me on or about the date they bear, September 28th, 1943." This witness denied that she told Mr. Wilton he was authorized to go ahead and charge the indicated prices. She testified:

"He told me that he had rehabilitated these flats and got them into good condition for renting in a rooming house condition rather than as apartments as they had been, and so I then told him that we *would accept the registration*. That is what we do, and it goes into the examination department for an inspection. I have no authority other than just to simply accept the registration and then he had to wait an approval before he could receive an O. K. on that registration. He was very anxious to have it approved so that he could go ahead." [R. p. 68.]  
(Italics ours.)

She said she told Mr. Wilton an inspection would be had and after this he came in and she told him it had not been approved. He said he couldn't wait; that his attorney had said he could operate it that way without the registration.

On cross-examination she was certain that she did not say that Mrs. Iliff was the one to approve the registration; that she could not tell how many registrations or re-registrations were made by Mr. Wilton, nor did she know the dates. "It was over quite a period of time in the year 1943."

Kate Barney was called by the government and testified that she inspected the premises at 441 and 435 North Figueroa Street, but without seeing Exhibits 4 and 5;



that Mr. Wilton gave her the details as to the number of rooms in each apartment and the number of occupants as of March 1st, 1942, and how many were living there at the time of the inspection; that he gave her information as to whether the apartments were furnished or unfurnished and what rentals were then being charged and the amount of the utilities that were being paid either by the landlord or by the tenants [R. p. 71]. She also testified that there were no rooms which she found which were rented solely for sleeping purposes, but Mr. Wilton would state how many rooms there were in the different apartments. As an example of her work she stated that apartment 16 was listed as a three room apartment, toilet and bath, and rented for \$10.00 a week with the water paid for by the landlord; that there was one occupant as of March 1st, 1942, and two on the date of inspection. [R. p. 72.]

On cross-examination the witness said "Every place I went in and saw myself, I found that Mr. Wilton's statements were verified."

On questions by the court, the witness stated that the units were separate housing units because of the bath; that the units were not so arranged that one could shut a door and occupy rooms separately so that different persons not belonging to the same family could occupy them; that she did not discuss with Mr. Wilton the requirements of a rooming house as distinguished from an apartment house. "It was right before our eyes that it was an apartment house."

At the close of the government's case, the defendant's counsel moved to dismiss the information and discharge the defendant. The motion was denied. The defendant's motion was based upon the contention that the housing accommodations rented on March 1st, 1942, were not the same as the accommodations for which the rents were charged on the respective dates on which it was alleged the charges made exceeded the maximum allowed and that a violation, if any, of the maximum rental regulation was not wilful because of the many attempts made by the defendant Wilton to comply with the requirements of the law and the assurances given to him by government employees that he was proceeding in the proper manner.

The defendant called as his first witness, R. M. Crawford, who was trustee in bankruptcy of certain companies up to December 1st, 1942. Among the assets of these companies were the properties in which the apartments were located which were the subject matter of this case. This witness testified that on account of a widening of Figueroa Street, a new front was put on the property in 1940, after which authority was given to some person to rent the building [R. p. 78]. A question as to the instructions given to such person or persons was objected to upon the ground that it was irrelevant, immaterial and hearsay. Thereupon the defendant offered to prove that the instructions were that the premises be rented for whatever could be obtained, with the view only of providing sufficient revenue to pay the costs of administering the bankruptcy.

In sustaining the objection, the court made a most unfortunate statement, prejudicial to the defendant. The court stated [R. p. 79]:

“There is only one question involved here. The property was registered at a certain rental prior to the date. The question is whether there was more charged than that, and that is all there is in this lawsuit. The mere fact that he rented it too cheaply, he is just out of luck.”

“Well, he couldn’t rent cheaply. His remedy is to apply to the board for a reclassification in the light of the conditions, but you couldn’t in this case, show that the O. P. A. made a mistake in freezing this man’s rent as of March 1st because the rentals were too low.”

Upon urging that the evidence was relevant as to whether or not the relationship of landlord and tenant existed as between the trustee in bankruptcy and a tenant [R. p. 80], the court said, among other things:

“I don’t think you can show in this case that the rentals as of March 1st were not fair rentals and that for that reason he had a right to charge more. His remedy, he having made the original registration, or the original registration having been made during the incumbency, was to apply for relief to the administrative agency.”

“Not having done so, they couldn’t go out and violate the law and then say that the rents were too low, because otherwise I would have to take the jury



out to the premises and have them go into these apartments, and from the expressions on the faces of some of the ladies who live there, we would have to determine whether that much ought to have been charged for that sort of an apartment, which provision the law does not take care of."

Again at page 82 of the record, the court said:

"The question is, is it a valid regulation, and was it violated, and that is all there is to this lawsuit, or to any lawsuit involving the O. P. A. We try them all . . ."

The witness Crawford stated that he had given Mr. Wilton a list of the apartments and a list of the rentals charged as of March 1st, 1942, but that he did not know of his own knowledge about any particular unit.

The purpose of the defendant's offer was to show by the trustee in bankruptcy that the apartments in question as of March 1st, 1942, had not been rented in the ordinary course of business but that persons had been permitted to occupy them for almost any amount in order to produce enough income to pay the bankruptcy administration costs. This evidence would not have changed the rent paid by any occupant as of March 1st, 1942, but it would have shown the reason for the course pursued by Mr. Wilton, as will presently be shown by Mr. Wilton's testimony.

Amid the technicalities of a new law and numerous regulations Mr. Wilton sought to make the best use of his property allowing as many occupants as possible and to obtain only a fair return thereon.



### Direct Examination of Mr. Wilton.

Hugh Wilton, the defendant, took the stand on his own behalf and said he had not been connected with the premises prior to December, 1942 (except before 1938); that at the time he received the list from Mr. Crawford he checked some of the apartments; he found apartment 16 was unfurnished so far as the landlord was concerned, the furniture being claimed by the tenant (Count 1).

He said the tenants of apartment 11 identified the dining room table and three chairs as belonging to the landlord (Count 4). When the tenant moved out of apartment 11 she left two dining room chairs and possibly a rocking chair [R. p. 86]. There was some furniture in apartment 4 (Counts 6 and 7, see R. pp. 86-87).

The defendant testified:

“At the present time seven people live in apartment No. 16, a man, wife and five children.”

Q. How many people are living in Apartment No. 10?”

Upon objection to this question, the following took place:

“The Court: How many live there now, or rather, lived there on the date in question?”

“Mr. Taylor: On March 1, 1942?”

“The Court: Yes. The only dates that we are interested in are the dates set forth in the indictment. We are not interested in the now.”

Thereupon the witness continued:

“Mr. and Mrs. Mathews were all the tenants in occupancy in Apartment No. 16. Mr. and Mrs. Hoffman live in apartment No. 10. Mr. and Mrs. Yost

and their three children live (sic) in Apartment No. 11. When Mr. and Mrs. Green lived (sic) in Apartment No. 3 there were three in the family, including one child. \* \* \* Mr. and Mrs. Bowers and two children lived (sic) in Apartment No. 4."

This testimony does not supply the omissions under Counts 4, 5, 6, and 7 of any testimony that the rentals paid for the period referred to in the information were for the housing accommodations described in the Information. It cannot be ascertained when the parties mentioned by Mr. Wilton were living in the apartments to which he referred.

Mr. Wilton testified to a conversation on February 6th, 1943, with attorney Warren L. Shobart at the O. P. A., in which Shobart said that the intent of Congress was to house more people in units; that there was no way of getting additional housing; that he hoped he would take in children; that \$10.00 would be a fair charge for the first tenant over the nominal tenancy and he would see that this was approved [R. p. 89]. This conversation was never denied.

Mr. Wilton consulted Mr. Bartlett, his attorney, and told Mr. Bartlett that Mr. Shobart had said there was no way by which new rates could be obtained upon a vacant apartment; that the apartments should be filled and then the matter taken up [R. p. 90].

Mr. Wilton said that he went down to the Office of Price Administration with the list of work done by the expenditure of \$4,000 out of \$7,000 in reconditioning the apartment [R. p. 91]. The witness continued by stating that he had 67 rooms and the form first given to him after he had completed the work was for 30 rooms; that

he went four or five times to see about this; that he was advised that when three-fourths of the original tenants had left the building it could be re-registered on a rooming house form [R. p. 92].

The witness said in all there were five petitions [R. p. 93] and on the fourth petition there was a change made as to certain kitchens and baths [R. p. 94]; that the health authorities had asked to have a bath accessible to all apartments on each floor, one for women and one for men and these baths were pointed out to Mrs. Burns [R. p. 94]. The details were gone over with a Mrs. Iliff of the O. P. A. Seven applications were built up [R. p. 95]. Mrs. Burns said "They have granted . . . we have granted you, Mr. Wilton, the privilege of re-registering your buildings on this form and it is effective February 15th, 1943." [R. p. 96.] Later Mrs. Burns referred to having trouble with one of the re-registration forms and then said there would be an inspection.

The inspection was made by Mrs. Barney and the nature of the inspection was described by the witness. The witness identified Exhibit A as the third registration and in the margin it shows apartments which are unfurnished and the ones which were furnished. There are 67 rooms shown on this form. Some of the apartments have three doors into the hall. Mrs. Burns wrote February 1st, 1943, as the effective day of this registration but "I got my copy about July 15th, 1943" [R. p. 101]. This exhibit was introduced in evidence and is the registration on the Hotel and Rooming House Regulation form.

The court asked:

"Did you ever take a room from an apartment and rent it to a single person?"



The answer seemed somewhat confusing so that the court said:

“To be regarded as a rooming house or hotel, you should be able to take a room for yourself, for one person, for the night with the usual accommodations.”

The witness answered in the affirmative as to renting one room.

The comment of the court as to what rooming accommodations are to be regarded as a rooming house was not in accordance with the regulations, in that the regulations permit the arbitrary classification of housing accommodations as a rooming house when consent is obtained from the administrator [R. p. 104].

At page 104 of the record, the witness made clear that the apartments have connecting doors from one room to another so that the rooms could be separately used or used as apartment units and that there were certain rooms which could be rented separately.

The witness stated that no one ever told him a petition was necessary in connection with a reregistration but that Mrs. Burns told him after any apartments were reconditioned and refurnished they were entitled to registration on the rooming house basis because of the fact that only three-fourths of the original tenants remained. [R. p. 105.]

The witness testified as to the nature of the reconditioning upon which \$7,000 had been spent after December, 1942; that the occupancy of one of the buildings increased from 12 on March 1, 1942, to 26 on the date of the filing of the Information and to 28 on the day of the trial. [R. p. 106.]



About this point the court made some very prejudicial remarks, stating that he was going to instruct the jury as a matter of law that a person could not double the number of tenants in an apartment and raise the maximum rent and turn it from an apartment into a rooming house; that by doubling the number of tenants the building remained an apartment and the price could not be raised except with the consent of the O. P. A., which the court stated had never been given in writing, thus impliedly laying down the rule that the consent could not be given other than by writing, although the law does not so provide, nor do any of the regulations.

At this point the court asked the witness whether he had ever rented to anyone by the day and the witness answered in the negative. The court then inquired as to why the application was put on the rooming house form and the witness answered that *the form was prescribed* and that *he was told to fill it in*. The questions by the court at this point [R. pp. 107-108] indicate that the court was unaware of the provision that a property could be arbitrarily classified as a rooming house.

Rent regulations for hotels and rooming houses, section 1, paragraph (c) which defines the scope of the regulation, states:

“Where a building or establishment which does not come within the definitions of a hotel or rooming house, contains one or more furnished rooms, or where furnished housing accommodations rent on a daily, weekly or monthly basis, the landlord may, with the consent of the administrator, elect to bring all housing accommodations within such building or establishment under the control of this regulation. A

landlord who so elects shall file a registration statement under this regulation for all such housing accommodations accompanied by a written request to the administrator to consent to such election."

The last mentioned provision must be read with subdivision 3 of paragraph (b) of Section 1 of the regulation for houses which provides:

"That housing accommodations with the consent of the administrator may be brought under the control of the rent regulation for hotels and rooming houses."

In addition to the twenty-four or twenty-five original registrations, one for each rental unit, reregistrations and supplemental registrations were filed. As a new one would be filed the old one was torn up. Mrs. Burns tore up the O. P. A. copy. [R. p. 110.]

### **Cross-Examination of Mr. Wilton.**

On cross-examination Mr. Wilton was shown Exhibit 6 as a receipt given to Mr. and Mrs. Mathews. The witness admitted his signature on the receipt but said that the receipt was for a payment which included rent, the proportionate share which the Mathews bore of the \$7,000 expended for reconditioning and their share of the utility services rendered; that the same items were included in the payments referred to in Exhibits 7, 8, 9, 10 and 11.

The witness explained his conversation with Mr. Shohart, stating that he had mentioned five points on which the rent could be increased or adjusted by O. P. A., namely, the reconditioning of the property, reconditioning of the apartments, refurnishing the apartments, increase of occupancy and increase of utilities. [R. p. 115.]

In response to the court's question, Mr. Wilton said that several at O. P. A. told him he could get a classification as a rooming house and that Mr. Shobart told him to come back and apply for a reclassification as a rooming house after conditions had been changed. The witness quoted Mrs. Burns as follows [R. p. 116]:

"Mr. Wilton, it is very unusual to get these changes, but we have been hoping to get relief in some instances where buildings are peculiarly situated in hotel sections. \* \* \* Where are three-quarters of the tenants—if it wasn't for the fact that three-quarters of the tenants are out, you wouldn't be entitled to it, but where three-quarters of the original tenants as of March 1, 1942, are out of the building, you can go ahead with your registration."

Substantially the same thing was said by Mrs. Iliff.

It was on September 28, 1943, at about the hour of 1:15 P. M. that Mrs. Iliff told me the petition was approved and was effective February 1, 1943. She told me to post the rates in the rooms. Mrs. Burns, however, was the one I really worked with. [R. p. 121.]

Mrs. Burns said:

"Mr. Wilton, you are operating under it (the petition) now and it is effective as of February 1st, 1943. Now it is complete and final and the examiner has to check the physical work here."

The witness had before him Exhibits 4 and 5 and it is observed from his testimony that he was referring to these exhibits under the Hotel etc. Regulation.



**Recross-Examination of Mr. Wilton.**

“By Mr. Tolin:

Q. Mr. Wilton, did you charge \$10.00 a week on the apartment that was occupied by Mr. and Mrs. Mathews prior to the day that you filed these Exhibits No. 4 and 5, those rooming house forms?

Mr. Taylor: I feel that that is immaterial.

The Court: Well it may bear as to the intent. He has a right to show charges at or about the time or after. If the word ‘wilful’ weren’t there, the violation would be enough. The objection is overruled.

(Testimony of Hugh Wilton.)

The Witness: Your Honor, on these apartments \* \* \*

The Court: I am not going to let you start another argument. You will have to answer the question yes or no.

The Witness: Yes.

I charged \$10.00 a week rent for the apartment occupied by the Hoffmans prior to the time I filed those Exhibits No. 4 and 5, the rooming house forms with the Area Rent Office. I charged \$10.00 a week for the apartment occupied by Mr. and Mrs. Yost prior to the time I filed those same forms. I charged \$10.00 a week for the apartment occupied by Mr. and Mrs. Green prior to the time I filed those forms. I charged \$10.00 a week for the apartment occupied by Mr. and Mrs. Bowers prior to the time I filed those forms.”

The statement by the court “If the word ‘wilful’ weren’t there the violation would be enough” was prejudicial to the defendant and impliedly improper.

The last paragraph of Mr. Wilton’s testimony as to the charge of \$10.00 a week made to certain of the complaining witnesses prior to the time Exhibits 4 and 5, the rooming house forms, were filed, seems to have been im-



material, and it will be noted that the *apartments* occupied by these parties were not *identified* by this testimony.

Our examination of Exhibits 4 and 5 do not enable us to ascertain that the rooms described therein were any of the rooms occupied by the complaining witnesses. If any rooms described in Exhibit A were the rooms occupied by the complaining witnesses, the amounts paid by these witnesses were not above the maximum rentals therein provided.

### **Rebuttal by Government.**

After the defendant had testified, the government recalled Georgia Burn, who denied any conversation with the defendant in which she stated to him that it was proper to charge the rents shown on Exhibits 4 and 5 as of February 1, 1943, although she admitted the date February 1, 1943, was in her handwriting. This witness stated:

"I don't know exactly what I did tell him \* \* \* I do know that he did understand that it was not up to me to make the decision \* \* \* I told Mr. Wilton that this would have to go through the usual procedure. There was never any approval."

On cross-examination the witness admitted that she had so many applications that she could not testify positively as to everything which was said. [R. p. 127.]

The government then called Warren L. Shobart, who denied that he had told Mr. Wilton the procedure was to refurnish, recondition or rerent the apartments at an increased rent before reregistering them. This witness said he told the defendant he would have to petition on adjustment of rent and that there were eight grounds for an adjustment of rent, including a change from partly furnished to fully furnished and a major capital improvement.

On questions from the court the witness stated that he did not say to the defendant that while the apartments were vacant there was nothing on which he could pass.

The government next called Ray Fordham, who testified that in the examining section of O. P. A. he could find no petition pertaining to the property at 441 North Figueroa Street. This witness stated that when registrations were not original or were registrations involving a change from original registrations fixing the rent as of March 1, 1942, they were preceded by an application requesting the change and setting forth the grounds; that a petition is necessary for an adjustment of rent after an original registration is filed. [R. p. 130.]

On cross-examination, however, this witness testified that housing accommodations after July 1, 1943, did not require a petition to change from the wholly unfurnished to the wholly furnished; that a definite petition or consent was required to operate as a rooming house; that the first petition would be to obtain consent to operate in a different manner but

"The maximum rates as and when that change is made would be established during the month of February, and not particularly on the 1st day of March, 1942, but regardless of the time, the petition is necessary to change the operation from an apartment accommodation to a rooming house or hotel accommodations and the change of rate would also have to be approved."

Robert L. Moore, called by the government, testified that there had been a petition filed in the enforcement section by attorney Paul Taylor but the nature of the petition was not shown.

I.

**The Court Failed to Charge the Jury Correctly as to the Nature of the Crime Alleged, and as to Its Elements, and as to the Theory of the Defense.**

Although the crime charged against the defendant was the violation of a regulation, the regulation was not offered in evidence. The jury was not given an opportunity of studying and considering how involved was this regulation which the defendant was forbidden to violate. By the formula instruction, this complicated matter was made more simple than it actually was, more simple than it was for the defendant. The jury was obliged to look to and take from the judge its entire knowledge of the nature of this regulation. The penalty provided is a penalty for "wilful" violation, and it is difficult to see how a regulation could be wilfully violated without a knowledge of its terms on the part of the violator, and it is difficult to see how the jury could pass upon the question of whether the defendant had sufficient knowledge of the regulation to be guilty of a wilful violation without a knowledge of the regulation itself. We, therefore, believe that there was a miscarriage of justice in this case because of the failure to give the jury a summary of the regulation in the instructions given to the jury where the regulation itself was not introduced.

As authority for the prejudicial character of the error now under discussion we cite the following cases:

In *Fischer v. United States*, 13 Fed. (2d) 756, the judgment of conviction was reversed because the charge to the jury omitted from its definition of conspiracy the element of an agreement or understanding. The charge



was a formula instruction and told the jury that if the jury believed certain named things were true beyond reasonable doubt, they constituted a conspiracy. The charge made clear that whether these things were true was to be decided by the jury on the evidence, but the element of agreement or understanding was omitted.

In *United States v. Harris*, 45 Fed. (2d) 690, the court said that where the evidence is meager, the court should be astute to see that the charge advised the jury as to all the elements of the crime.

In *Christensen v. United States*, 90 Fed. (2d) 152, the court said:

"We think the accused was entitled to a definition of the crime and to specific instructions on the subject of criminal intention. The statute defines the offense which includes the intention which was a necessary element of the offense."

In *Connley v. United States*, 46 Fed (2d) 53, at 57, 58, it appears that a conviction was reversed because in a summation by the court certain evidence was not referred to tending to show the innocence of the accused although other evidence was referred to which pointed to his guilt.

In *Paddock v. United States*, 79 Fed. (2d) 872, conviction was reversed because of an error in the instruction concerning reasonable doubt, the court saying:

"Belief may and should result from a preponderance of the evidence and a preponderance of the evidence is not sufficient to convict in a criminal case."



In the case at bar, the court charged the jury in formula instructions as to each count of the information, except the second which was dismissed, and these formula instructions were substantially similar in content, and constituted the only knowledge given to the jury as to the regulation the violation of which was the crime charged, except certain negative statements as to facts which would not excuse the defendant from receiving more than the maximum rental. The charge amounted to a direction to find the defendant guilty if the named facts were *believed* by the jury to be true. In every one of these vital portions of the charge *the belief* of the jury was said to be sufficient to convict. In connection with each fact necessary to constitute the crime, as stated by the court, the word "evidence" was not mentioned, but only the necessity for a belief on the part of the jury that the facts stated were true.

Where the regulation violated is not known to the jury and the jury is told to convict if the jury *believes* the defendant has done certain things, a consideration of the evidence becomes unnecessary and conviction is likely to follow.

This would seem to make the trial a jury trial in name but not in fact. If a jury, without knowing the law which the accused is charged with breaking, namely, a regulation by an administrative body, may convict on belief alone, our constitutional right to jury trial is placed in jeopardy.

In this connection we think the language of *Paddock v. United States*, 79 Fed. (2d) 872, should be given careful consideration:

"Since a chain is no stronger than its weakest link, our constitutional rights and guaranties are no more

secure, and we may expect no greater protection than is given to us by the court's weakest decision."

One essential fact which the court charged the jury must believe was true in order to convict was that the Area Rent Office had not made an order authorizing such a higher rental. (We pause to note that the words "Area Rent Office" are nowhere to be found in the regulation.) The court then said that it was the duty of a landlord desiring to raise a rent to petition the Area Rent Office, and to await approval before accepting any higher rent, and finished by saying that expenditures for changed conditions or increased occupants, without approval of the Office of Price Administration would not excuse a higher charge. A mistake in believing that approval had been obtained would not be a defense according to the charge because the judge expressly said:

"If without such approval, the defendant knowingly and wilfully charged the higher rentals as alleged in any of the counts of the information, then he is guilty of the charge in the particular count of the information, even though you should be convinced that he actually made the charges or incurred the expenditures." [R. p. 142.]

The collection of a rent higher than the maximum, thus, was made a crime, if wilfully collected, even if under the most sincere belief that approval had been given. The jury may also have remembered the comment of the court as to necessity of a written consent to a raise [R. p. 107]. This limitation on the use of the word wilful as defining

the crime seems wholly unjustified. Collection of increased rent is at one's peril, if the approval of the office cannot be definitely established. Once the collection is proved, the defendant is the one required to prove beyond reasonable doubt the fact he obtained approval. This error in requiring the defendant to establish the approval, and not allowing unintentional mistake as to the approval to mitigate the wilfulness of the crime, is not to be lightly passed over. Innocent men are the ones most apt to be caught by this construction of the statute.

Where wilfulness is an essential to the commission of the crime, it must be an essential to every element of the crime.

Not only did the instructions to the jury improperly limit the defense, but they were erroneous in not dealing at all with the subject of which regulation was applicable to the housing accommodations here in question. In effect the defendant testified that he thought his property was under the Hotel and Rooming House Regulation. The Rent Regulation for Housing, section 1, paragraph b provides that the regulation shall not apply to (3)  
\* \* \* housing accommodations which have been, with the consent of the Administrator, brought under the control of the Rent Regulations for Hotels and Rooming Houses. The Rent Regulation for Hotels, etc., has a corresponding provision which reads as though it was intended to give the landlord an election in certain cases. Section 1, paragraph c, entitled "Election by landlord to bring housing under this regulation," reads "where a



building or establishment which does not come within the definition of a hotel or rooming house contains one or more furnished rooms or other furnished housing accommodation rented on a *daily, weekly or monthly* basis, the landlord may, with the consent of the Administrator, elect to bring all housing accommodations within such building or establishment under the control of this regulation."

The regulation does not provide how the consent is to be given nor when it becomes effective nor whether it shall be in writing or not.

There is the provision that the landlord, who *so elects*, shall file a registration statement with a written request to the Administrator to consent to such election. It would, however, be a natural mistake to assume that the acceptance of the registration would be a waiver of the request. The evidence in this case conclusively shows that the defendant did file a registration statement under this Regulation for Hotels, etc. If filed, and accepted by the office how would the defendant know that the consent to come under this regulation had not been given?

There is this important difference between the two Regulations, the Regulation for Housing establishes for a rental unit only one term, whereas the Rent Regulation for Hotels, etc. establishes in section 4 separate maximum rents for different terms of occupancy (*daily, weekly or monthly*) and numbers of occupants of a particular room. The defendant was not accused of violating this Regulation.



The instructions of the court as to the necessity for obtaining the approval of the Office of Price Administration before changing the rentals ignored the lawful method, which was the actual method pursued by the defendant, of obtaining or attempting to obtain the consent of the administrator and filing a registration statement under the Regulation as to Hotels, etc.

The question should have been left to the jury as to which Regulation applied. Instructions to the jury as to housing to which the Regulation mentioned in the Information did not apply, was vital to a fair consideration of the case. Whether the defendant could be guilty of a wilful violation of the Housing Regulation, when attempting to comply with the other regulation was a serious question which the defendant had a right to submit to the jury.

We are not unmindful that no exceptions were taken to the instructions given to the jury in this case. We believe that this case is one for the application of the principle stated in *Williams v. United States*, 66 Fed. (2d) 868, namely, that the Appellate Court may notice plain and grievous errors which deflect the course of justice. We believe the court should take cognizance of the errors here because the legislation involved is so new, and the right to a fair charge to the jury, which is almost the same thing as a jury trial, is so important. The errors in this case were so basic as to result in the denial of a fair trial to the defendant.

## II.

### The Judgment of Conviction Must Be Reversed Because of the Total Insufficiency of the Evidence of Guilt.

In *Boatright v. United States*, 105 Fed. (2d) 737, it is said: "It was, of course, incumbent upon the government to prove every essential element of the offense charged."

In *Paddock v. United States*, 79 Fed. (2d) 872, the rule with respect to circumstantial evidence is stated, "This rule in brief is that the circumstances shown must not only be consistent with guilt, but inconsistent with every reasonable hypothesis of innocence."

In *Edwards v. United States*, 7 Fed. (2d) 357, the court said the appellate tribunal had an inherent power to consider the sufficiency of the evidence where a miscarriage of justice would result from a failure to do so, and the court weighed the presumption of a domicile remaining unchanged against the presumption of innocence, and because all circumstances shown by the evidence were as consistent with innocence as with guilt, set aside a conviction under the Selective Service Act of 1917.

We made a careful statement of the evidence in the first part of this brief, having in mind the argument now to be advanced.

Count 1. There is no evidence that the defendant received for the period charged in the information, September 28th to October 12th, 1943 the sum of \$20.00 as rent for that period. Mrs. Mathews said "Our rent was paid way in the future at that time." There is no evidence what was paid for the full month of September 1943, or for the full month of October 1943. There was evidence that apartment 16 was rented unfurnished on

March 1, 1942, for \$16.00 per month. There is no evidence as to the rate on March 1, 1942 for a two week's period. Mrs. Mathews testified she had her receipts and she could have proved the monthly rent paid by her, but she failed to do so. The evidence is consistent with credits and refunds sufficient to make her rent not over 16.00 per month.

Count 3. For apartment No. 10 Mr. Hoffman said he paid \$10 a week for the period December 1-December 15, 1943. Madge Bentley testified the rental on this apartment was 20.00 a month on March 1, 1942, partly furnished. Except as to the number there was no evidence to show that the same housing accommodations were rented on March 1, 1942 for 20.00 a month and in December 1943 to the Hoffmans for \$10.00 a week. Whether the apartments bearing this number had the same number of rooms, the same furniture or were quite different is left to conjecture.

Count 4. The rent which was more than that referred to by Madge Bentley as the maximum for apartment 11 was not paid according to Mrs. Mary Yost for apartment 11, but for apartment 14 or apartment 12. There is no evidence of what the maximum rental on these apartments was on March 1, 1942. Whether Mrs. Yost became confused as to the number of her apartment or in fact occupied an apartment other than 11 on the date charged we do not know. There is a complete failure to show as charged in count 4 that more than the maximum rent was received for apartment 11.

Count 5. There is a complete lack of evidence that more than the maximum rental was received for apartment 3, as charged in count 5. Count 5 charges the excessive rent was received from Mr. and Mrs. Green, but Mrs. Green did not mention the number of the apartment for



which she had paid rent. There is also insufficient evidence that the rent paid for the period stated in count 5 was ever received by the defendant. Mrs. Green did not know whether she paid to Mr. Wilton or to Mr. Fenkell.

Counts 6 and 7. As in the case of the testimony given by Mrs. Green, Mrs. Bowers did not mention the apartment for which she paid the rent claimed to exceed the maximum. Without knowing the apartment on which this rent was paid it is impossible to tell whether the maximum was exceeded. There is a complete failure of proof as to this count.

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The proof of knowledge on the part of the defendant as to what was the maximum rent is one of the weakest links in the proof offered by the government. He did not employ the manager who testified as to the rentals on March 1, 1942. He was not residing there at the time. He received a list of the apartments from the trustee in bankruptcy, but the trustee had no personal knowledge of the accuracy and the list was not put in evidence. Mr. Wilton carefully placed at the bottom of the registration statements as to the apartments in question, Exhibits 1 and 2a, qualification to his verification, namely that to the best of his knowledge and belief the rents were as stated. These registrations were filed about January 1, 1943, but the alleged offenses were committed in December of 1943. Was this knowledge sufficiently accurate to be binding on him? It will be observed that he is not accused of violating the maximum rent stated in his registration. This evidence of the defendant's knowledge is not strong.



The judge charged that such apartment must be found by the jury to be the same housing accommodations before the jury could convict. There was no evidence to determine what changes had been made in the apartments. They were not described except by number by Madge Bentley and the description by the various tenants was meager. There was on the other hand uncontradicted testimony as to the large amount spent on the house for renovations, and there is a serious doubt as to whether there was sufficient proof of the point now under discussion.

There is a total lack of evidence that the regulation referred to in the Information was applicable to the housing accommodations described in the Information.

This question is parallel to that discussed above in connection with our contention that the court erred in not leaving to the jury, under appropriate instructions, the question of whether the applicable regulation was the rent regulation for housing or the rent regulation for hotels and rooming houses, etc.

As we have stated heretofore, an apartment house could be brought under the regulation for hotels and rooming houses with the consent of the Administrator. The Government, therefore, as a part of its case, was required to prove affirmatively and beyond reasonable doubt that no such consent had been given. There is no evidence that the Administrator did not give a consent to register the premises in question under the regulation which governed hotels and rooming houses. There was evidence introduced that no approval of the Administrator for an increase in rents was ever given under the rent regulation for housing. There was evidence that no *request* for permis-

sion to register under the regulation for hotels was made. From the fact that several registrations [See Exhibits 4 and 5, and Defendant's Exhibit A] were accepted by the Office of Price Administration, which were made under the regulation for hotels, etc., the jury could have found a *waiver* of the requirement as to the necessity for a prior request by the landlord. The evidence warranted a conclusion that the defendant understood the consent of the Administrator had been given to register under the regulation for hotels, etc. It was incumbent upon the government to establish that no such consent had been given.

It was incumbent upon the government to establish conclusively that the defendant was bound by the regulations he was accused of violating. Whatever by way of exclusion and inclusion was required to show the applicability of the regulation alleged to have been violated, should have been proved beyond reasonable doubt by the government.

The failure of the government to prove beyond reasonable doubt that the rent regulation for housing accommodations was applicable to the defendant was a fatal defect in the government's proof.

Finally we come to the question of the good faith of the defendant; whether the government proved that the violation was wilful. There were the many conferences with the O. P. A.; there were the attempts to register the apartments under the Regulation as to Hotels; there were the expenditures and changes which seemed to justify a change in rate. A preponderance of the evidence is not enough. We think the circumstances are as consistent with the innocence of the accused as with the guilt and that the government did not prove the element of wilfulness beyond reasonable doubt.

**Conclusion.**

On account of the lack of evidence that the apartments described in the information were rented for more than the maximum allowed, on account of the substantial evidence showing attempted compliance with the O. P. A. regulations, on account of the failure to acquaint the jury with the nature of the law violated and the failure to instruct on the necessity of convicting upon evidence rather than belief alone, we respectfully request the court to reverse the conviction of the defendant.

Respectfully submitted,

PAUL TAYLOR,

*Counsel for Defendant.*

JOSEPH D. TAYLOR,

ELLWOOD W. KEMP, JR.

*Of Counsel.*





No. 10740.

IN THE  
United States Circuit Court of Appeals  
FOR THE NINTH CIRCUIT

---

HUGH WILTON,

*Appellant,*

*vs.*

UNITED STATES OF AMERICA,

*Appellee.*

---

APPELLEE'S BRIEF.

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IN THE

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## APPELLEE'S BRIEF.

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### Jurisdiction.

The District Court had jurisdiction under Section 205(b) of the Emergency Price Control Act of 1942, as amended, 56 Stat. 23 (50 U. S. C. App. 901 *et seq.*) and Section 24 of the Judicial Code (28 U. S. C. 41(2)). The offenses charged in the information were committed in the City of Los Angeles, State of California, within the jurisdiction of the District Court. This Court has jurisdiction of the appeal under Section 128 of the Judicial Code (28 U. S. C. 225).

## Statutes and Regulations Involved.

Sections 202(b) and 204(a) of the Emergency Price Control Act of 1942, as amended, 56 Stat. 23 (50 U. S. C. App. 901, *et seq.*) provide in part:

Section 202(b) (50 U. S. C. App. 902(b)):

"Whenever in the judgment of the Administrator such action is necessary or proper in order to effectuate the purposes of this Act, he shall issue a declaration setting forth the necessity for, and recommendations with reference to, the stabilization or reduction of rents for any defense-area housing accommodations within a particular defense-rental area. \* \* \* the Administrator may by regulation or order establish such maximum rent or maximum rents for such accommodations as in his judgment will be generally fair and equitable and will effectuate the purposes of this Act. \* \* \*

Section 204(a) (50 U. S. C. App. 904(a)):

"(a) It shall be unlawful, regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, for any person \* \* \* to demand or receive any rent for any defense-area housing accommodations, or otherwise to do or omit to do any act, in violation of any regulation or order under section 2 or of any price schedule effective in accordance with the provisions of section 206, or of any regulation, order, or requirement under section 202(b) or section 205(f), or to offer, solicit, attempt, or agree to do any of the foregoing."

Maximum Rent Regulations 53 (7 Fed. Reg. 8596, 8 Fed. Reg. 7322) provides in part:

"Sec. 1388.281 SCOPE OF REGULATION. (a) This Maximum Rent Regulation No. 53 applies to all housing accommodations within \* \* \*

(5) The Los Angeles Defense-Rental Area, consisting of the Counties of Los Angeles and Orange, in the State of California. \* \* \*

Sec. 1388.282. PROHIBITION AGAINST HIGHER THAN MAXIMUM RENTS. (a) Regardless of any contract, agreement, lease or other obligation heretofore or hereafter entered into, no person shall demand or receive any rent for use or occupancy on and after the effective date of this Maximum Rent Regulation No. 53 of any housing accommodations within the Defense-Rental Area higher than the maximum rents provided by this Maximum Rent Regulation; and no person shall offer, solicit, attempt, or agree to do any of the foregoing. \* \* \*

Sec. 1388.284 MAXIMUM RENTS. Maximum rents \* \* \* shall be:

(a) For housing accommodations rented on March 1, 1942, the rent for such accommodations on that date. \* \* \*

Sec. 1388.285 ADJUSTMENTS AND OTHER DETERMINATIONS. In the circumstances enumerated in this section, the Administrator may issue an order changing the maximum rents otherwise allowable or the minimum services required. \* \* \*

(a) Any landlord may file a petition for adjustment to increase the maximum rent otherwise allowable. \* \* \*

Sec. 1388-287. Within 45 days after the effective date of this Maximum Rent Regulation No. 53, or within 30 days after the property is first rented, whichever date is the later, every landlord of housing accommodations rented or offered for rent shall file in triplicate a written statement on the form provided therefor to be known as a registration statement. The statement shall identify each dwelling unit and specify the maximum rent provided by this Maximum Rent Regulation for such other information as the Administrator shall require. \* \* \*

Sec. 1388.293 \* \* \*

(6) The term 'housing accommodations' means any building, structure, or part thereof, or land appurtenant thereto, or any other real or personal property rented or offered for rent for living or dwelling purposes, together with all privileges, services, furnishings, furniture, equipment, facilities and improvements connected with the use or occupancy of such property. \* \* \*

(12) The term 'rooming house' means, in addition to its customary usage, a building or portion of a building other than a hotel in which a furnished room or rooms not constituting an apartment are rented on a short time basis of daily, weekly, or monthly occupancy to more than two paying tenants not members of the landlord's immediate family. The term includes boarding houses, dormitories, auto camps, trailers, residence clubs, tourist homes or cabins, and all other establishments of a similar nature.

(b) Unless the context otherwise requires, the definitions set forth in section 302 of the Emergency Price Control Act of 1942 shall apply to other terms used in this Maximum Rent Regulation.



Sec. 1388.294 EFFECTIVE DATE OF THE REGULATION. This Maximum Rent Regulation No. 53 (Secs. 1388.281 to 1388.294, inclusive) shall become effective November 1, 1942.

Issued this 22d day of October, 1942.

LEON HENDERSON,  
Administrator."

### Statement of the Case.

On January 28, 1944, Charles H. Carr, United States Attorney for the Southern District of California, filed an information in seven counts in the United States District Court for the Southern District of California, Central Division, charging appellant with violations of the Emergency Price Control Act of 1942 (50 U. S. C. App. 902 *et seq.*), as amended, herein called the Act [R. 2-12].

Each count of the information charged that the defendant was the operator of a certain apartment building, and that he wilfully and unlawfully demanded and received from a designated tenant in a specified apartment in that building a rental which was in excess of the maximum rent permitted under the Maximum Rent Regulation (*supra*) duly promulgated under the Act.

On February 11, 1944, appellant entered a plea of not guilty to each of the counts, and on March 15, 1944, the cause was tried before the District Court and a jury [R. 13, 15-16]. At the close of the Government's case, the Court denied appellant's motion for dismissal of the information [R. 75]. Appellant then introduced evidence on his own behalf [R. 75 ff.], which was followed by

rebuttal evidence for the Government [R. 125 ff.]. The jury found appellant guilty upon all counts except count two, which had been dismissed during the trial upon motion of the Government [R. 16].

Thereafter, on April 3, 1944, the District Court sentenced appellant to imprisonment for a period of 90 days on count 1 of the information, and to pay a fine of \$500 upon each of the other five counts, the receipt of \$500 by the clerk of the Court to be in satisfaction of the fines imposed [R. 17-18].

### Statement of Facts.

At all times material herein, appellant has been the operator and rental agent of certain conjoined premises at 435 and 441 North Figueroa Street, Los Angeles [R. 52], which constituted an apartment house or houses, and in which apartments were rented to various tenants.

Pursuant to applicable rent control regulations, sometime on or before January 15, 1943 [R. 43], appellant filed with the Office of Price Administration registration statements for rental dwellings showing the rentals charged on March 1, 1942, for each of the premises described in the information [R. 37-42, 54]. According to these statements, the premises in question were rented on March 1, 1942, at the monthly rental of \$15 for apartment 3 [R. 41, 53]<sup>1</sup> \$17.50 for apartment 4 [R. 40, 53], \$18 for apartment 10 [R. 38, 53], \$18 for apart-

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<sup>1</sup>For convenience of the Court, we shall refer to the particular premises involved in the separate counts of the information by the apartment numbers which the owners of the buildings have assigned to them. These are apartments 3, 4 and 9 at 435 North Figueroa Street [R. 40-42], and apartments 10, 11 and 16 at 441 North Figueroa Street [R. 37-39].

ment 11 [R. 39, 53], and \$16 for apartment 16 [R. 37, 52]. Between November 1 and December 1, 1942, appellant admittedly received a list of the above rentals for the apartments [R. 83, 84], and he personally prepared the rent registrations showing such rents [R. 114].

Since at least September, 1943, appellant was fully aware of the fact that in order to increase rents above the March 1, 1942, figure, approval had to be obtained first from the O.P.A. [R. 90-94, 115], and had previously petitioned the O.P.A., without success, for permission to increase the rentals [R. 89-94].

In September, 1943, appellant admittedly discussed with various persons at the local O.P.A. office his desire to re-register the apartment houses as rooming houses and to rent the rooms separately [R. 67-68, 93-95].<sup>2</sup>

Appellant was informed on this occasion that the premises would have to be inspected [R. 68, 97]. The inspection of the houses was made in the presence of the appellant that night [R. 51, 68, 70-73, 97-98]. The inspector told the appellant that the property was an apartment house and could not be considered a rooming house [R. 74-75].

Next morning the appellant returned to the O.P.A. office, where he was informed that his proposed registra-

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<sup>2</sup>Appellant had held similar discussions with O.P.A. officials also on other occasions [R. 88-93]. Appellant prepared new registration forms for the premises as rooming houses [R. 47-48, 49-50, 68].



tion of the property as a rooming house rather than as an apartment house, had not been approved [R. 44, 46, 49, 51, 69].

No such approval was ever accorded to the appellant [R. 69, 70, 126].

On October 30, 1943, appellant collected from the tenants therein \$20.00, for rental of apartment 16 for the period of two weeks from September 28 to October 12, 1943 [R. 57-58, 112].

On December 1, 1943, appellant collected from the tenants therein \$20.00 for rental for apartment 10 for the period of two weeks from December 1 to December 15, 1943 [R. 60-61, 112].

On December 20, 1943, appellant received from the tenant therein \$10 as rental for apartment 11 for the period of December 18-25, 1943 [R. 7, 62-63, 112].

On December 11, 1943, appellant collected from the tenant therein \$10 for rental of apartment 3 for the period of December 11-18, 1943 [R. 63-64, 112].

On December 6, 1943, appellant collected \$10.00 from the tenant of apartment 4, as rental for the period of December 5-12, 1943 [R. 9, 65-66, 112].

On December 14, 1943, appellant collected \$10.00 from the tenant of apartment 4 as rental upon the same apartment for the period December 12-19, 1943 [R. 9, 65-66, 112].

In each of these instances appellant issued a written receipt for the rental collected [R. 57-66].



Appellant admits that even prior to filing the proposed, but rejected, reregistrations of the premises in question in order to obtain permission from the O.P.A. to charge higher rentals, he had already charged the higher, illegal, rentals [R. 125].

Appellant testified on his own behalf [R. 84-125]. In the main, appellant's testimony was to the effect that he was informed by O.P.A. officials that his reregistrations had been approved and that he could charge the higher rentals.

In rebuttal, the O.P.A. officials named by the appellant flatly contradicted his testimony in this and other respects [R. 125-129; see also R. 35-36, 43-46, 51-52]. They testified also, in effect, that appellant was specifically informed that his "rent was frozen" [R. 129].

### Questions Presented.

1. Is the evidence sufficient to support the conviction of appellant?
2. Did the trial judge commit error in instructing the jury. If so, was the error of such character as to require reversal of the judgment?

### Summary of Argument.

1. The evidence is sufficient to sustain appellant's conviction under each count.
2. The trial judge properly instructed the jury.

## ARGUMENT.

### I.

#### The Evidence Is Sufficient to Sustain Appellant's Conviction Under Each Count.

Appellant asserts (App. Br. 8) that the evidence fails to sustain the jury's verdict of guilty. There is no merit to this assertion.

The evidence in this case is clear and unequivocal. The appellant knew the precise rents which he could charge for each apartment; he was not only given a list of the legal rents, but he himself filed apartment registration statements which he personally had prepared and in which he had inserted the applicable maximum rents.

Despite such unambiguous knowledge on his part, appellant nevertheless deliberately and wilfully charged rentals in excess of these permitted by law.<sup>3</sup> Appellant's own testimony in this case, in fact, fully establishes his guilt.

That appellant acted "wilfully" in the premises, is likewise patent on the face of this record.<sup>4</sup> For appellant not only knew the exact rents which he could charge under the law, but he also knew that in order to charge any

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<sup>3</sup>Appellant in reviewing in his brief the testimony of various witnesses in this case, in rearguing issues of credibility and reweighing all the evidence, obviously misconceives the function of this Court on an appeal. Appellant is entitled to no such consideration of these matters as he now seeks. See, *e.g.*, *Womble v. United States*, 146 F. (2d) 263 (C. C. A. 9). And the evidence most favorable to the Government is clearly ample to support the jury's verdict on every count and to sustain the judgment below.

<sup>4</sup>See, *e.g.*, *Zimberg v. United States*, 142 F. (2d) 132, 137 (C. C. A. 1), cert. den. 65 S. Ct. 38; *Di Melia v. Bowles*, 57 F. Supp. 710, 713 (D. C. D. Mass.); *Bowles v. Krasno Bros. Glove & Mitten Co.*, 59 F. Supp. 581, 583 (D. C. E. D. Wisc.); *Bowles v. Goebel* (D. C. N. D.) 58 F. Supp. 686; *Bowles v. Keane*, 47 N. Y. S. (2d) 347.

rentals in excess of those which were charged for the premises on March 1, 1942, it was first necessary to obtain official permission from the O.P.A. to reregister the premises. And appellant knew that no such permission had been granted to him.<sup>5</sup>

Nevertheless, and in the face of his crystal-clear knowledge respecting these matters, the appellant deliberately on numerous occasions charged and collected rentals in excess of the legal maximum, not only after his request for higher rentals had been rejected by the O.P.A., but even before he had filed the request.

Appellant's contentions to the effect that he spent large sums of money for renovation of the house are plainly not in point in this case. Maximum Rent Regulation No. 53 (*supra*) provides (Section 1388.285) a method by which a landlord may petition for an adjustment of rental where he has made a major improvement, and in other cases. However, appellant never filed an application for an adjustment under that nor any other section, except the application for registration for rooming house privileges discussed above, which was denied and appellant notified of the denial.<sup>6</sup>

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<sup>5</sup>Of course, appellant's contention that he received such permission is of no weight, since he was flatly contradicted in that respect by the O.P.A. officials in question; and the jury, which has the exclusive function of resolving conflicts in evidence, did not believe appellant's testimony in this respect, as is self-evident from the verdict of guilty.

<sup>6</sup>It need hardly be pointed out that whether the denial of appellant's application in the last noted respect was or was not proper, was not a matter for decision in a criminal prosecution for wilful violation of the Emergency Price Control Act of 1942, as amended, and applicable regulations under it. The denial of the application was purely an administrative matter under the Act, and was in no respect before the trial court or is before this Court in this case.



This case presents one of the clearer instances of wilful violation of the Emergency Price Control Act and its regulations. Appellant was in no sense confused or uncertain as to his obligations under the law. He merely chose to disregard them, and to charge the rental he thought he should receive.

There is manifestly no occasion to set aside the judgment here as unsupported by evidence.

## II.

### The Trial Judge Properly Instructed the Jury.

Appellant asserts that he was prejudiced by the trial judge's charge to the jury.

At the outset it should be noted that at the close of the charge, appellant made only one request for clarification [R. 144]. The trial judge thereupon further instructed the jury [R. 144-145]. Appellant's counsel then stated that he had "no other exceptions" [R. 145].

Obviously appellant has no standing to complain now that the charge was improper in any respect. Having failed to preserve an adequate record on appeal in this matter, appellant has no standing before this Court insofar as the charge is concerned.

However, even if appellant could raise that point now, it is without substance. In this connection appellant argues (App. Br. 29) that his client did not have knowledge of the terms of the rent control regulation, and that since the regulation was not offered in evidence, the jury could not see how "complicated" it was. This is no defense. The regulation was published in the Federal Register and did not have to be offered in evidence by the Government.



It is clear that while the trial Court did not read to the jury the regulation which appellant was charged with having violated, the formula instructions which the trial Court gave were plainly sufficient and fully apprised the jury of the necessary elements which had to be present to constitute the violations alleged in the information. These instructions translated the language of the regulation into simple, understandable tests by which the jurors were to determine the questions of fact and apply the law and thereby provided the jury with all of the material which a reading of the regulation could have supplied.

Anyway, the evidence clearly demonstrated that appellant was fully aware of all that was required of him under the regulations, and that he nevertheless wilfully violated them.

It would serve no useful purpose to reproduce here the detailed instructions given by the Court in this case. They appear in the record [R. 132-144], and we respectfully request the Court to examine them at this point, since they are demonstrably complete and protected the appellant in every essential respect.

Appellant's complaint (App. Br. 31) that the word "evidence" was omitted by the Court from its charge as the basis of conviction, is erroneous. The trial judge specifically in part told the jury: "You are to be governed, therefore, solely by the evidence introduced at the trial and the law as given you by the Court," also advising the jury that its function was to try the issues of fact [R. 134]. Further, the Court instructed the jury that it was its function to decide which testimony was true [R. 136-138] and that if it "believed beyond a reasonable doubt" [R. 138 ff], that appellant demanded and received the rents which he was charged in each count

with having collected, and that he “knowingly and wilfully” charged the higher rental, that the jury then was to find appellant guilty as to that count [R. 138 ff].

Obviously, under the existing law and on the basis of the rentals charged on March 1, 1942, if appellant wilfully charged the rents alleged in the information on the dates shown therein, he was guilty of the violations charged. And if the jury believed that he wilfully charged the higher rents and disbelieved his extenuating explanations, it had to find appellant guilty as charged.

The complaint by appellant (App. Br. 32-33) as to the charge regarding “wilfully” as applicable to this case [R. 138], is likewise without merit (see, *supra*, p. 10). Moreover the trial judge added the requirement of “knowingly” to “wilfully,” thus placing upon the Government an added burden not required by the statute, to the appellant’s benefit.

Obviously no merit attaches to appellant’s added assertion (App. Br. 34-35) that the question of which regulation applied to appellant’s premises, should have been left to the jury. There is no justification for the submission of such an issue to the jury. The sole benefit which might flow to appellant from the existence of different regulations would relate only to the issue of wilfulness. And on that issue the evidence is clearly against him, as we have shown above.

There was no error in the trial judge’s charge to the jury.

### Conclusion.

The evidence upon which the jury found appellant guilty plainly furnishes adequate support for that verdict. The trial Court committed no reversible error in its rulings, or in its instructions to the jury. Appellant has had a fair and full trial. There is no reason for setting aside the verdict and the lower court's judgment. The judgment should be affirmed.

Respectfully submitted,

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